



# International Covenant on Civil and Political Rights

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\*, \*\*

<i>Communication submitted by:</i>	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)
<i>Alleged victims:</i>	The authors and Jesús Israel Moreno Pérez (son and brother of the authors)
<i>State party:</i>	Mexico
<i>Date of communication:</i>	10 November 2015 (initial submission)
<i>Document references:</i>	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)
<i>Date of adoption of Views:</i>	5 November 2019
<i>Subject matter:</i>	Disappearance
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	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
<i>Articles of the Covenant:</i>	2 (3), 6 (1), 7, 9 and 16
<i>Articles of the Optional Protocol:</i>	5 (2) (b)

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

\* Adopted by the Committee at its 127th session (14 October to 8 November 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, 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.



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.<sup>1</sup> 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.<sup>2</sup>

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,<sup>3</sup> 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”.<sup>4</sup>

### *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.

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 District<sup>5</sup> 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

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<sup>1</sup> 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/mexico1111spwebwcover.pdf>.

<sup>2</sup> CED/C/MEX/CO/1.

<sup>3</sup> 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>.

<sup>4</sup> 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](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).

<sup>5</sup> Case file 644/EXT/2011.

opened.<sup>6</sup> 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 investigation<sup>7</sup> 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.<sup>8</sup>

*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,<sup>9</sup> 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 him into the sea.<sup>10</sup> 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.<sup>11</sup> That same day, Honorio Corcuera made a statement alleging that Javier Rodríguez Peña had stabbed Mr. Moreno Pérez on a road in Chacahua.<sup>12</sup>

<sup>6</sup> Preliminary investigation 176/RG/2011.

<sup>7</sup> Preliminary investigation 149/costa/2011.

<sup>8</sup> Preliminary investigation PGR/SIEDO/UEIS/009/2012.

<sup>9</sup> The authors enclose a copy of the order to appear issued in respect of Tomás Medina Lorenzana, dated 30 October 2011.

<sup>10</sup> The authors enclose a copy of the statement of Javier Rodríguez Peña, dated 2 December 2011.

<sup>11</sup> The authors enclose a copy of the statement made by Javier Rodríguez Peña in preventive custody, dated 5 December 2011.

<sup>12</sup> The authors enclose a copy of the statement of Honorio Corcuera, dated 5 December 2011.

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”.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

2.16 On 29 December 2011, a “verbal autopsy”<sup>16</sup> 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.<sup>17</sup>

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 Vázquez Martínez, and told to say that 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”.<sup>18</sup> 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”.<sup>19</sup> 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.<sup>20</sup>

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<sup>13</sup> The authors enclose a copy of the crime scene investigation report, dated 21 December 2011.

<sup>14</sup> The authors enclose a copy of the forensic chemical examination report, dated 24 December 2011.

<sup>15</sup> The authors enclose a copy of the virtual appraisal report, dated 25 December 2011.

<sup>16</sup> 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”.

<sup>17</sup> The authors enclose a copy of the death certificate.

<sup>18</sup> The authors enclose a copy of the preparatory statement delivered by the defendant Javier Rodríguez Peña before the court, dated 4 January 2012.

<sup>19</sup> The authors enclose a copy of the statements of the defendants Margarito González and Honorio Corcuera, dated 17 April 2012.

<sup>20</sup> 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

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.<sup>21</sup> 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.<sup>22</sup> 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".<sup>23</sup>

*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*

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.<sup>24</sup>

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.<sup>25</sup> 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.<sup>26</sup>

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.

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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.

<sup>21</sup> The authors enclose a copy of the application for *amparo*.

<sup>22</sup> 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.

<sup>23</sup> The authors enclose a copy of the statement of Francisco Javier Domínguez Rodríguez, dated 28 December 2013.

<sup>24</sup> Administrative case file 09/VIS.GRAL/2013.

<sup>25</sup> 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.

<sup>26</sup> *T.K. v. France* (CCPR/C/37/D/220/1987), para. 8.2.

They also recall that States parties have an obligation to ensure the protection of individuals against violations committed by private persons.<sup>27</sup> 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".

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.<sup>28</sup> 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.

<sup>27</sup> *Pestaño v. the Philippines* (CCPR/C/98/D/1619/2007), para. 7.2.

<sup>28</sup> 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.

### **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 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.<sup>29</sup> 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".<sup>30</sup>

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,<sup>31</sup> 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.

<sup>29</sup> *Selyun v. Belarus* (CCPR/C/115/D/2289/2013), paras. 7.2 and 7.3.

<sup>30</sup> CAT/C/MEX/CO/5-6, para. 15.

<sup>31</sup> *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,<sup>32</sup> 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.<sup>33</sup>

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),<sup>34</sup> 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 not only by its agents, but also by private persons or entities".<sup>35</sup> 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

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<sup>32</sup> 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.

<sup>33</sup> Preliminary investigation 138/FESP/2013 and its addendum 21/FESP/2015.

<sup>34</sup> Preliminary investigation AP/PGR/SDHPDSC/UEBPD/M30/214/2015.

<sup>35</sup> *Krasovskaya v. Belarus* (CCPR/C/104/D/1820/2008), para. 8.3.

impunity or the crystallization of some sort of perfect crime gives reason to believe that the disappearance may be attributable to the State.<sup>36</sup> The authors also stress that the Office of the Oaxaca Human Rights Ombudsman<sup>37</sup> 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”.<sup>38</sup> 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”.<sup>39</sup> 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”.<sup>40</sup>

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.<sup>41</sup>

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

<sup>36</sup> *Godínez-Cruz v. Honduras*. Merits, Judgment of 20 January 1989, Series C, No. 5, para. 155.

<sup>37</sup> 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.

<sup>38</sup> The authors enclose a copy of recommendation 13/2016 of the Office of the Oaxaca Human Rights Ombudsman, dated 16 November 2016, p. 46.

<sup>39</sup> Recommendation 13/2016 of the Office of the Oaxaca Human Rights Ombudsman, dated 16 November 2016, pp. 48 and 49.

<sup>40</sup> *Ibid.*, pp. 43 to 45.

<sup>41</sup> *Ibid.*, p. 69.

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.<sup>42</sup> 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.<sup>43</sup>

#### **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 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.<sup>44</sup> 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 Vásquez 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.<sup>45</sup>

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.

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<sup>42</sup> Ibid. p. 42.

<sup>43</sup> Ibid. pp. 51 and 52.

<sup>44</sup> Investigation case file 139/UEDF/2018.

<sup>45</sup> The communication does not provide further details about the judgment in respect of which the application for *amparo* was lodged.

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".<sup>46</sup> Consequently, on 5 September 2018, the Ombudsman's Office instituted proceedings for the protection of human rights<sup>47</sup> 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".<sup>48</sup> The High Court received the request on 11 September 2018.<sup>49</sup>

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

<sup>46</sup> 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.

<sup>47</sup> 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".

<sup>48</sup> 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.

<sup>49</sup> The authors enclose a copy of the notice from Oaxaca High Court, Constitutional Chamber and Fourth Criminal Chamber, case file 09/2018.

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.

#### **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 inquiries<sup>50</sup> 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.

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

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<sup>50</sup> 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.

the rights enshrined in the Covenant.<sup>51</sup> 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.<sup>52</sup>

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 evidence<sup>53</sup> 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.

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

<sup>51</sup> *T.K. v. France*, para. 8.3.

<sup>52</sup> *Télez Padilla v. Mexico* (CCPR/C/126/D/2750/2016), para. 8.4.

<sup>53</sup> Inter-American Court of Human Rights. *Godínez Cruz v. Honduras*, merits, judgment of 20 January 1989, series C, No. 5, para. 154.

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.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> 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).<sup>57</sup> 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,<sup>58</sup> including a violation of article 6 of the Covenant in cases where some effort has been made to investigate the case.<sup>59</sup> 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 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).

<sup>54</sup> 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.

<sup>55</sup> General comment No. 36, para. 19.

<sup>56</sup> *Ibid.*, para. 21.

<sup>57</sup> *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.

<sup>58</sup> *Amirov v. Russian Federation* (CCPR/C/95/D/1447/2006), para. 11.2.

<sup>59</sup> *Herrera Rubio v. Colombia* (CCPR/C/31/D/161/1983), para. 11.

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.<sup>60</sup>

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 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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<sup>60</sup> *Boudjema v. Algeria* (CCPR/C/121/D/2283/2013), para. 8.8.