



## International Covenant on Civil and Political Rights

Distr.: General  
10 May 2021  
English  
Original: Spanish

### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3259/2018\*, \*\*

<i>Communication submitted by:</i>	Irma Leticia Hidalgo Rea (represented by Philip Grant, Blanca Isabel Martínez Bustos and Michael William Chamberlin Ruiz)
<i>Alleged victims:</i>	The author and Roy Rivera Hidalgo (the author's disappeared son)
<i>State party:</i>	Mexico
<i>Date of communication:</i>	15 January 2018
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 24 October 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	25 March 2021
<i>Subject matter:</i>	Enforced 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; right not to be subjected to arbitrary or unlawful interference with one's privacy
<i>Articles of the Covenant:</i>	2 (3), 6, 7, 9, 16 and 17
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1. The author of the communication, dated 15 January 2018, is Irma Leticia Hidalgo Rea, a national of Mexico born in 1962. The author is acting on her own behalf and on behalf of Roy Rivera Hidalgo, her elder son, also a national of Mexico, born in 1992 and disappeared on 11 January 2011. The author alleges that the State party has violated Mr. Rivera Hidalgo's rights under articles 6, 7, 9 and 16 of the Covenant, read alone and in conjunction with article

\* Adopted by the Committee at its 131st session (1–26 March 2021).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



2 (3). The author also claims to be herself a victim of a violation by the State party of her rights under articles 7 and 17 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 author is represented.

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

#### *Factual background*

2.1 The author asserts that the facts of the present communication are set against a background of serious human rights violations perpetrated with the direct or indirect involvement or acquiescence of agents of the State party. She stresses that perpetrators of disappearances enjoy total impunity in the State party, as such offences are routinely committed there and effective search and investigation measures are lacking.<sup>1</sup> In 2011 and 2013, a “war” between organized criminal groups – “Los Zetas” and the “Cartel del Golfo” – took place in the state of Nuevo León. The author adds that there are four documented practices in which local authorities have been linked to organized criminal groups in relation to disappearances: acts perpetrated by State agents; acts perpetrated by State agents who are also working for organized criminal groups; acts perpetrated by organized criminal groups with the direct support of State agents; and acts perpetrated by organized criminal groups with the acquiescence of the State.<sup>2</sup>

2.2 The author also states that, a few days before Mr. Rivera Hidalgo’s disappearance, two of his friends were disappeared. On 7 January 2011, Mr. S.J., who was with Mr. Rivera Hidalgo and another friend, was captured by armed men in a black Dodge Nitro van without a licence plate (the type of vehicle used by the municipal police at the time). Mr. Rivera Hidalgo and the second friend managed to escape. The author adds that, on that occasion, a radio frequency device fell out of the vehicle and was handed over to the authorities for analysis. However, the appointed expert claimed that he had been unable to carry out the required analysis because he lacked the necessary equipment.<sup>3</sup> There is no record of any attempt being made to address the technical shortcomings or to carry out any further follow-up to this investigative lead. On 8 January 2011, Mr. C.H., who was also a friend of Mr. Rivera Hidalgo, was captured by armed men while he was in his father’s vehicle. Mr. C.H.’s parents did not file a complaint because they feared reprisals and feared that doing so would undermine their chances of finding their son alive. At the time of writing, the fate and whereabouts of Mr. S.J. and Mr. C.H. remain unknown.

2.3 At around 1 a.m. on 11 January 2011, between 12 and 20 armed and hooded individuals arrived at the author’s home in San Nicolás de los Garza, Nuevo León, where she lived with her two sons. Approximately 12 men carrying long weapons managed to enter the house. Three of them were wearing vests bearing the words “Policía de Escobedo”, Nuevo León, and all but one had their faces covered. The men ordered the author to kneel down, restrained her sons and started beating them. The men claimed that they belonged to the criminal organization “Cartel del Golfo” and that they had been sent by the Government.<sup>4</sup>

<sup>1</sup> The author cites, inter alia, Committee on Enforced Disappearances, CED/C/MEX/CO/1, para. 10; Working Group on Enforced or Involuntary Disappearances, A/HRC/30/38/Add.4, para. 7; Inter-American Commission on Human Rights, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico* (OEA/SER-L/V.II. Doc. 48/13), paras. 8, 12, 30, 63–68, 100–102, 105, 118, 410, 484–485 and 488; see also paras. 120 and 123–124. In the context of Nuevo León, the author cites Latin American Faculty of Social Sciences (Mexico branch), Human Rights Program of the University of Minnesota and Latin American Centre of the University of Oxford, report of the Observatory on Disappearances and Impunity, 2017, p. 11, available at [https://www.flacso.edu.mx/sites/default/files/170616\\_resumen\\_informe\\_nl\\_vf.pdf](https://www.flacso.edu.mx/sites/default/files/170616_resumen_informe_nl_vf.pdf).

<sup>2</sup> The author cites, inter alia, Ciudadanos en Apoyo a los Derechos Humanos, A.C., *Desapariciones en Nuevo León, desde la mirada de CADHAC. Informe 2009–2016*, Nuevo León, chap. 2, available at <https://cadhac.org/docs/desapariciones-nl-2009-a-2016.pdf>.

<sup>3</sup> The author attaches the expert’s report.

<sup>4</sup> The author explains that cartels in Nuevo León have been engaged in a struggle to control the territory and that, in 2011, “Los Zetas” controlled almost all the territory while the “Cartel del Golfo” disputed that control. The author states that, as part of these struggles between criminal organizations,

The men asked about Roy Rivera Hidalgo, whom they accused of selling drugs. When he identified himself, they took him from the house along with some money, various valuable items and two vehicles.

2.4 After her son had been taken, the author saw the men driving away in the two stolen vehicles and a dark grey Seat vehicle with no licence plates. The author and her younger son went to a neighbour's house so that they could spend the night away from their home. From there, they saw two passing patrol cars belonging to the municipal police of San Nicolás de los Garza. The cars approached the author's house and two policemen got out, looked inside the house (the doors of which were open) and left. In the light of what had happened, the author did not report the facts immediately as she did not trust the local authorities.

2.5 At around 4.30 p.m. on the same day, the author received a call warning her not to file a complaint and asking for 500,000 pesos (Mex\$) to see her son again. Over the course of the next few hours, and into the following day, the author received 12 calls from three different numbers. The callers all made the same threats and demands. During one of the calls, on 12 January 2011, her son was put on the line at her request. When the author had confirmed that it was her son, the captors took the phone away from him and the author could hear him screaming as he was being beaten. On the same day, 12 January 2011, the author handed over Mex\$ 100,000 and the receipted invoices for the two vehicles that had been stolen from her. On 13 January 2011, at 6 a.m., the author called the number that she was using to contact her son's alleged captors in order to receive instructions on where to pick him up. Although they assured her then that they were going to treat her well, they never contacted her again or returned her calls. At the time of writing, the fate and whereabouts of Mr. Rivera Hidalgo remain unknown.

2.6 Given that she had been threatened and that she hoped that her son would be released, the author did not file a complaint immediately. In addition, she feared that local authorities were involved in the kidnapping. On 4 February 2011, the author appeared before the authorities of the seventh military zone in Apodaca, Nuevo León, to file a complaint. The author never obtained a copy of her complaint and does not know whether any action was taken to initiate a search and investigation. On 28 February 2011, she went to that authority again but was told that there was no record of her complaint and that she should submit it again to the Public Prosecution Service. On the same day, the author reported the facts to the Office of the State Attorney General of Nuevo León, including the fact that police officers from the Escobedo police were allegedly involved in her son's abduction. On 1 March 2011, preliminary investigation No. 79/2011-1-3 was initiated. On 12 March 2011, the author broadened the scope of her complaint after she returned home that day and found that someone had broken in and left Mr. Rivera Hidalgo's room in disorder.

2.7 The author alleges that all action taken in connection with the case has depended entirely on her initiative, as the authorities take a passive attitude and are unjustifiably slow to act. For example, the first action taken by the authorities was on 5 April 2011, when they sent a request to the Telcel telecommunications company to trace one of the telephone numbers provided by the author. However, since the company name and address on the letter were incorrect, it was resent on 26 July 2011 and the response was not added to the case file until 25 May 2012. On 8 April 2011, the author and her younger son voluntarily went to the Department of Forensic Services of the Office of the State Attorney General of Nuevo León, whose report was not added to the case file until 5 August 2014. It was not until this date, and at the author's request, that their profiles were entered into the DNA database of relatives of disappeared persons. On 22 July 2011, the author and her younger son went to the Escobedo police station to carry out a visual inspection of the bulletproof vests worn by the police. Although they were unable to identify the model used by the persons who had broken into their home, they claimed that the vests worn by the police were very similar to those worn by some of the perpetrators of Mr. Rivera Hidalgo's disappearance. However, the police have stated that no report concerning the theft of vests has been filed. Moreover, no other

---

members would mutually accuse each other by claiming to belong to the other cartel in order to sow confusion among the public and law enforcement agencies.

investigation is being conducted to establish whether the vests worn by the armed men responsible for the reported events belonged to the Escobedo police.

2.8 On 13 June 2011, the author submitted a complaint to the National Human Rights Commission of Nuevo León that has failed to bring about any significant progress in the investigations.

2.9 On 10 August 2011, Navy officers arrested Mr. G.R., also known as “El Sureño” (an alleged member of “Los Zetas” cartel), whom the author and her younger son identified as the man whose face was not covered on the night of the events. On 19 August 2011, the author went to the Office of the State Attorney General of Nuevo León to report this fact.

2.10 On 13 September 2011, the author filed a complaint concerning the same facts with the Office of the Assistant Attorney General for the Investigation of Organized Crime of the Attorney-General’s Office.<sup>5</sup> On 2 October 2011, the author went to the Office of the Assistant Attorney General for the Investigation of Organized Crime to identify Mr. G.R. as one of the perpetrators of her son’s disappearance. As a result, her complaint was added to the file of the existing preliminary investigation against Mr. G.R.<sup>6</sup>

2.11 On 31 January 2012, the author broadened the scope of her statement after reading in newspaper reports that Mr. C.P., an officer of the San Nicolás de los Garza police, had been arrested with another officer for kidnapping young persons. According to her statement, both officers had acted on the orders of “El Sureño”, in order to hand the kidnapped youths over to organized criminal gangs. In her statement, the author referred to several lines of inquiry and requested that specific steps be taken.<sup>7</sup>

2.12 The author affirms that, between 2012 and 2017, the State party’s authorities did not carry out any meaningful action on their own initiative and that nothing was added to the case file during those years except records of her requests and information that she provided. As at the date of submission of the communication, which was seven years after Mr. Rivera Hidalgo’s disappearance, only six persons who might be linked to the events have been arrested and none of them has been formally charged or prosecuted.<sup>8</sup> The author has also provided information on other persons who may be linked to her son’s disappearance.<sup>9</sup>

2.13 The author adds that, although she has applied to the Office of the State Attorney General of Nuevo León to be recognized as a victim under the Victims Act on seven occasions since 2013, it was not until 2 February 2017 that she was granted this status, at the request of the Executive Commission for Victim Support. The author and her younger son were added to the National Register of Victims on 29 April 2016 and 21 March 2017, respectively. However, they have not received any support. In particular, the author requested food support in August 2017 and medical assistance in September 2017 but has received no response.

2.14 Lastly, on 15 December 2017, the author submitted an application for *amparo* to the District Criminal Court of the State of Nuevo León. The author states that she decided to submit this application in order to keep open the case of her son’s enforced disappearance and to call on the local authorities, once again, after seven years of inaction, to take steps to establish his fate and whereabouts and to identify, prosecute and punish those responsible for the offences concerned. However, the author asserts that this mechanism cannot bring about

---

<sup>5</sup> Which opened official report No. AC/95/UEIDMS/2011, for which the Special Unit for the Investigation of Offences against Health is responsible.

<sup>6</sup> Under No. 474/UEIDCS/2011.

<sup>7</sup> The author attaches the news article and the addition to her statement. However, there is no indication in the file that this new information was used in the investigation into her son’s disappearance or that any steps were taken in this regard.

<sup>8</sup> These six persons include three persons who were arrested on a kidnapping charge as part of a single operation; one person who was arrested with the van stolen from the author and charged with vehicle theft; another person who has been charged with offences against health; and another person arrested on charges of kidnapping, organized crime and possessing drugs and weapons.

<sup>9</sup> These persons include a former officer of the San Nicolás de los Garza police who was Mr. G.R.’s partner, and another person whom the author identified as having pointed a long gun at her on the day of the incident.

a breakthrough or significant change in the investigation. This is demonstrated by the fact that, on 2 January 2018, the competent judge summoned the author to explain her claim after requesting that she inform the court of the address or addresses at which her son might be located with a view to having him come to assent to the *amparo* application that had been filed. In view of this situation, and in the absence of any other available remedy, the author decided to submit a communication to the Committee.

2.15 The author maintains that the communication meets the requirement of article 5 (2) (b) of the Optional Protocol in that she has pursued all the domestic remedies available to her without any of them having proven to be effective and that there is no remaining remedy that might offer a realistic prospect of success. Citing the Committee's jurisprudence, the author affirms that only those remedies that are available and effective must be exhausted, that domestic remedies need not be exhausted if they objectively have no prospect of success, and that it is for the State party to demonstrate the existence of effective and available remedies.<sup>10</sup> The author refers to the various complaints filed and her active participation in all the investigations and explains that, almost seven years after the facts became known to the authorities, no effective investigation has been carried out, none of the remedies pursued by the author has any objective prospect of success and the processing of these remedies has been unreasonably prolonged. With regard to the application for *amparo*, the author argues that, as the Inter-American Commission on Human Rights has ruled, the requirements established in the *Amparo* Act for the remedy to be applied render it ineffective.<sup>11</sup> Proof of this is the response given by the judge overseeing the application.

### The complaint

3.1 The author states that Mr. Rivera Hidalgo has been a victim of enforced disappearance attributable to the State party and therefore of violations of articles 6, 7, 9 and 16 of the Covenant. She asserts that the three constituent elements of this offence are met: (a) Mr. Rivera Hidalgo was deprived of his liberty when he was taken from his home; (b) the act was perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State; and (c) the State party denies participating in the events or is concealing Mr. Rivera Hidalgo's fate or whereabouts by failing to investigate the events properly.

3.2 The author argues that the communication should be read in the particular context of Mexico, where disappearances are widespread and perpetrators enjoy total impunity, and that the failure to conduct investigations may amount to acquiescence and constitute enforced disappearance, even in the case of abductions perpetrated by non-State actors.<sup>12</sup> She also affirms that consideration must be given to the specific context of this disappearance, as State agents acting together with organized criminal groups perpetrated many offences, including acts of enforced disappearance, in the state of Nuevo León in 2011. The author also argues that, as the State party has failed to comply with its positive obligation to prevent and investigate such acts effectively, making it impossible to establish with certainty whether State agents were directly or indirectly involved in the criminal conduct concerned (particularly given the above-mentioned context), responsibility for Mr. Rivera Hidalgo's enforced disappearance must be attributed to the State party. The author argues that it is for the State party to prove: (a) that State agents did not tolerate, acquiesce in, or directly participate in the actions of the group of men who subjected her son to enforced disappearance; (b) that in 2011, in the state of Nuevo León, and specifically in San Nicolás de los Garza, no links existed between organized criminal groups and State forces (including in connection with kidnappings and enforced disappearances); and (c) that the authorities have investigated the author's repeated allegations with due diligence, taking into account

<sup>10</sup> *Young v. Australia* (CCPR/C/78/D/941/2000), para. 9.4; *Barzhig v. France* (CCPR/C/41/D/327/1988), para. 5.2; and *Sankara et al. v. Burkina Faso* (CCPR/C/86/D/1159/2003), para. 6.4.

<sup>11</sup> *Guzmán Cruz v. Mexico*, report on admissibility, No. 50/13 of 12 July 2013, para. 38. The author adds that, although the Act was amended in 2013, the requirements that it still sets out remain impossible to fulfil in cases of enforced disappearance, such as her son's, and therefore need not be exhausted.

<sup>12</sup> The author cites the report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration (A/HRC/36/39/Add.2), para. 42.

the existing context and the perpetrators' modus operandi, and that they have not ruled out any hypothesis.<sup>13</sup> Otherwise, the author argues, the State party should be held responsible for the enforced disappearance under international law.

3.3 The author affirms that Mr. Rivera Hidalgo has also been a victim of a violation of article 2 (3) of the Covenant, read in conjunction with articles 6, 7, 9 and 16, in that he did not have access to an effective remedy. The author argues that States parties have positive obligations, such as the obligation to take all necessary measures to search for and locate the disappeared person without delay; to conduct, ex officio, a prompt, thorough, independent and impartial investigation; to identify, prosecute and punish those responsible; and to ensure that victims receive prompt, fair and adequate compensation and benefit from reparation measures, including rehabilitation, satisfaction and guarantees of non-repetition.<sup>14</sup> In this case, almost seven years after the authorities received the author's complaint, no significant progress has been made and there is no evidence that the investigation has been carried out with due diligence; rather, the author herself has undertaken every initiative in the face of the authorities' passivity.

3.4 The author claims to be a victim of violations under article 7 of the Covenant, read alone and in conjunction with article 2 (3), because of the profound suffering caused by the uncertainty about her son's fate and whereabouts.<sup>15</sup> The disappearance of the author's son has caused her to feel deep anguish, great frustration and feelings of guilt, which have required her to seek psychological support and medical treatment for clinical depression, insomnia, stress, anxiety and constant fear.<sup>16</sup>

3.5 The author also claims that she suffered a violation of her right not to be subjected to arbitrary interference with her privacy and home under article 17 (1) of the Covenant, read alone and in conjunction with article 2 (3). The author recalls that the persons who perpetrated her son's disappearance, among whom there were agents of the State party, broke into her home in the early hours of the morning, destroying objects and damaging her house and farm.<sup>17</sup> Furthermore, the reprisals, harassment and threats directed at the author made her feel so afraid that she was unable to enjoy her family life and home and had to move elsewhere.<sup>18</sup> The author also claims a violation, under the same article, of her right to know the truth and, in the event of her son's death, the right to have his remains exhumed, identified, respected and returned.<sup>19</sup>

<sup>13</sup> The author cites *Serna et al. v. Colombia* (CCPR/C/114/D/2134/2012), para. 9.3, and Inter-American Court of Human Rights, *Gutiérrez Hernández et al. v. Guatemala*, judgment of 24 August 2017, Series C No. 339, paras. 135 and 147–196.

<sup>14</sup> The author cites general comment No. 31 (2004), paras. 3, 8, 15, 16 and 18, and various pieces of jurisprudence of the Inter-American Court of Human Rights and the European Court of Human Rights.

<sup>15</sup> The author cites *Serna et al. v. Colombia*, para. 9.8; *Basnet v. Nepal* (CCPR/C/117/D/2164/2012), para. 10.7; *Neupane et al. v. Nepal* (CCPR/C/120/D/2170/2012), para. 10.8; and *Terafi v. Algeria* (CCPR/C/110/D/1899/2009), para. 7.5.

<sup>16</sup> The author mentions, for example, that Mr. G.R. sent a letter to her home while he was in detention (which, although the letter was not threatening, showed that he knew her home address); that the two murals painted on the author's home in order to denounce and draw attention to her son's disappearance were damaged on two occasions (in 2013 and 2014) without any investigation having taken place; that two screens and a computer belonging to the organization Fuerzas Unidas por Nuestros Desaparecidos en Nuevo León were stolen from the author's home in 2016; and other instances of revictimization in the face of the authorities' indifference and inaction.

<sup>17</sup> The author cites *Aouali et al. v. Algeria* (CCPR/C/109/D/1884/2009), para. 7.12; and *Mezine v. Algeria* (CCPR/C/106/D/1779/2008), para. 8.10.

<sup>18</sup> The author cites *Peiris v. Sri Lanka* (CCPR/C/103/D/1862/2009), paras. 7.6 and 7.7.

<sup>19</sup> The author cites articles 24 (2) and (3) of the International Convention for the Protection of All Persons from Enforced Disappearance, which entered into force for the State party on 23 December 2010. The author also cites the general comment on the right to the truth in relation to enforced disappearances of the Working Group on Enforced or Involuntary Disappearances (A/HRC/16/48); and Office of the United Nations High Commissioner for Human Rights, report on the right to the truth (A/HRC/5/7) and study on the right to the truth (E/CN.4/2006/91), among other regional documents and jurisprudence.

3.6 By way of reparation, the author requests: (a) that the Committee declare that the State party has violated articles 6, 7, 9 and 16, read alone and in conjunction with article 2 (3), of the Covenant, in respect of Mr. Rivera Hidalgo; and articles 7 and 17 (1), read alone and in conjunction with article 2 (3), of the Covenant, in respect of the author; (b) that the State party be urged to provide an effective remedy involving the conduct of an independent, thorough and effective investigation in order to identify those responsible for the offences concerned and to prosecute and punish them with appropriate and commensurate penalties; (c) that a rigorous and systematic search be carried out, with adequate human and economic resources and, in the event that Mr. Rivera Hidalgo is deceased, that his remains be located, exhumed, identified, respected and returned to his family, all within a framework of coordinated action with family members; (d) that full reparation be made for the harm caused, including the provision of medical and psychosocial care for the author and her younger son; that a public apology and an official declaration of State responsibility be issued for the enforced disappearance of Mr. Rivera Hidalgo; and that prompt, fair and adequate compensation be provided; (e) that, as guarantees of non-repetition, the General Act on Enforced Disappearance of Persons, Disappearance Perpetrated by Individuals and the National Missing Persons System be implemented without delay; and that a unified search protocol and an international mechanism to combat impunity be implemented to ensure the investigation and prosecution of offences under international law and serious human rights violations; (f) that the State party provide, within 180 days, information about the measures taken to give effect to the Committee's Views; and (g) that the State party publish the Committee's Views in the Official Gazette or in a high-circulation newspaper, giving them the widest possible publicity.

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

4.1 On 30 January 2019, the State party submitted observations on the admissibility of the communication, arguing that it should be declared inadmissible for failure to exhaust domestic remedies under article 5 (2) (b) of the Optional Protocol.<sup>20</sup>

4.2 The State party refers to the steps taken by both the Office of the State Attorney General of Nuevo León and the Attorney General's Office to establish the whereabouts of Mr. Rivera Hidalgo and locate those responsible for his disappearance, listing the various measures taken as part of each investigation. It states that both proceedings have continued uninterrupted since the author filed her complaint, resulting in the issuance, at the federal level, of an arrest warrant against Mr. G.R., who is being prosecuted in connection with criminal case No. 152/2011-IV. The State party argues that the proceedings are still under way at the time of writing and that they are the most appropriate means of continuing the investigation into Mr. Rivera Hidalgo's disappearance. With regard to the proceedings before the National Human Rights Commission of Nuevo León, the State party states that, although the Commission found that the investigation pursued by the Office of the State Attorney General of Nuevo León had been subject to delays and issued a recommendation in this regard, the Office is continuing to comply with this recommendation. Therefore, insofar as the State party is addressing the regrettable facts on which the author's communication is based, domestic remedies have not been exhausted and the communication must be declared inadmissible.

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

5.1 In her observations of 8 May 2019, the author submitted comments on the State party's observations on admissibility and provided an update on the facts. The author begins by stating that, contrary to the State party's claims, the proceedings have been unjustifiably delayed and, therefore, no effective domestic remedies have been available, making the communication admissible. She submits that the fact that more than eight years have passed since the complaints were filed, with a lack of significant progress that cannot be attributed

<sup>20</sup> The State party cites International Court of Justice, *Interhandel Case (Switzerland v. United States of America)*, *Preliminary Objections, Judgment of 21 March 1959*, *I.C.J. Reports 1959*; and Inter-American Commission on Human Rights, *Manuel Tejada Ruelas v. Mexico*, report on inadmissibility, No. 44/10, 17 March 2010, para. 35.

either to the author or to the complexity of the case, itself constitutes an unjustified delay.<sup>21</sup> The author affirms that the State party has not put forward any justification for the delay in the investigation and has not provided any concrete information on how the Office of the State Attorney General of Nuevo León is complying with the recommendation made by the National Human Rights Commission of Nuevo León, which found that there had been an unjustified delay in the investigation of the facts by the authorities and that no serious and exhaustive investigation had been conducted. The author stresses that no significant progress has been made since the Commission issued its recommendation. Lastly, although the State party claims that the existing proceedings are the most appropriate means of continuing the investigation, it provides no indication as to why it believes this when the proceedings in question have produced no results. The author also points out that the State party refers to steps taken between 2011 and 2013 but provides no information on any actions taken since then. As a result, the current remedies cannot be considered effective and offer no prospect of success.

5.2 The author adds that, on 9 May 2018, lawyers working for the Executive Commission for Victim Support told her that her case file contained an email dated 27 December 2013 that was addressed to the authority that preceded the Executive Commission. According to this email, an image had been found in the photographic archives of the Forensic Medicine Services that showed a body found in the state of Coahuila that could be that of Mr. Rivera Hidalgo. On 15 May 2018, the author's representatives went to the prosecutor's office of the state of Coahuila, where they learned that fingerprints taken from the body had shown that it was that of another person. The author made several requests to have the identity of the body confirmed. However, it was not until 22 April 2019 that she was informed of a photographic expert's appraisal, dated July 2018 (i.e. almost nine months earlier), that identified a morphological correspondence between the body shown in the photograph and that of Mr. Rivera Hidalgo. Owing to the high margin of error in this type of appraisal, the fate of Mr. Rivera Hidalgo remains uncertain and the authorities are not taking the necessary steps to corroborate or refute the results of the appraisal. As a result of this situation, the author has been constantly revictimised and has had to suffer the frustration of learning that, although the body in question had been found in 2013, she was not informed of this fact until almost five years later. The author claims that these events exacerbate the violations referred to throughout the communication.

### **State party's observations on admissibility and the merits**

6.1 On 24 April 2019, the State party submitted additional observations on the admissibility of the communication and observations on its merits. The State party reiterates that a number of investigations are under way and that the investigation by the Office of the State Attorney General of Nuevo León is examining three lines of inquiry: (a) Mr. Rivera Hidalgo was abducted by persons belonging to organized criminal groups; (b) Mr. Rivera Hidalgo was abducted by persons who might possibly belong to a public security agency; (c) Mr. Rivera Hidalgo, Mr. S.J. and Mr. C.H. were in trouble with members of criminal groups. The State party reiterates that domestic remedies have not been exhausted and that the communication should therefore be declared inadmissible.

6.2 With regard to the merits of the communication, the State party argues that the obligation to conduct an investigation and bring those responsible to justice is not an obligation of result, but of means, and that it must be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities.<sup>22</sup> In order to comply with this obligation, the State party must conduct a prompt, impartial and thorough investigation to establish the fate or whereabouts of the alleged victim.<sup>23</sup> The State party argues that it

<sup>21</sup> The author cites the then recent Inter-American Court of Human Rights case *Alvarado Espinoza et al. v. Mexico*, judgment of 28 November 2018, Series C No. 370, in which the Court found that the fact that almost nine years had passed without any prosecutions or convictions in the case constituted, in itself, a violation of the authors' rights.

<sup>22</sup> The State party cites *Prutina et al. v. Bosnia and Herzegovina* (CCPR/C/107/D/1917/2009, 1918/2009, 1925/2009, 1953/2010), para. 9.5.

<sup>23</sup> The State party cites, inter alia, *Kožljak et al. v. Bosnia and Herzegovina* (CCPR/C/112/D/1970/2010), para. 9.2.



launched an investigation without delay as soon as it learned of the disappearance on 28 February 2011, as the complaint was referred to the State Agency of the Anti-Kidnapping Unit of the Office of the State Attorney General of Nuevo León on 1 March 2011. At the same time, the investigations were conducted impartially, as the observations made by Mr. Rivera Hidalgo's family members were taken into account, resulting in the identification of the likely perpetrators and the issuance of an arrest warrant against Mr. G.R. Moreover, the author's suggestion that members of the local police may have been involved has not affected the impartiality of the investigation into the facts. Lastly, the State party argues that the investigations have been exhaustive and once again lists many of the steps taken in each investigation. Accordingly, the State party affirms that it has exercised due diligence in all relevant investigations.

6.3 The State party argues that Mr. Rivera Hidalgo's disappearance cannot be attributed to the State, since there is no evidence of any involvement by State agents, nor can it be attributed to the State by virtue of any omission. With regard to the former, the adequacy of the investigation and the attribution of responsibility to the State party are subject to different standards of assessment. In particular, the attribution of responsibility to the State party must be supported by evidence. Even if the Committee considers the investigations to have been inadequate, it cannot infer therefrom that the State party is responsible for the disappearance, as such a claim must be supported by evidence. In this case, the State party affirms that the only evidence suggesting that Mr. Rivera Hidalgo's disappearance was perpetrated by State agents is the statement made by the author and Mr. Rivera Hidalgo's younger brother. However, this statement does not constitute sufficient evidence to attribute responsibility.<sup>24</sup> Although the State party has made every possible effort, it has failed to substantiate the author's claims. In fact, when the author and her younger son were shown the bulletproof vests worn by the municipal police of Escobedo, Nuevo León, they said that the vests resembled, but were not the same as, those worn by the perpetrators on the day of the events. The Office of the State Attorney General of Nuevo León also asked the security authorities to submit all records relating to shifts, operations, agents and uniforms that were carried out or used on the day of the disappearance. To date, it has not been established that State agents were involved in the events or that they were present in the area on the day of the disappearance. Lastly, although it has not been proven that State agents participated in the events, this line of investigation remains open. Therefore, in weighing up the evidence analysed and the measures taken, the mere statements of the author and her younger son cannot be considered to be substantiated.

6.4 With regard to a possible omission by the State party, the State party argues that the preventive measures that it must take in order to protect treaty rights must be assessed in the light of its knowledge of a reasonably foreseeable situation of risk.<sup>25</sup> Thus, the State party's responsibility for omission depends on whether it knew, or ought to have known, of the existence of a situation of real or immediate risk under reasonably foreseeable circumstances. The State party argues that it did not know, and had no reason to know, why Mr. Rivera Hidalgo might have been disappeared. The State party therefore requests the Committee to declare that Mr. Rivera Hidalgo's disappearance cannot be attributed to it.

6.5 Lastly, the State party affirms that the violations of the author's personal integrity caused by the anguish of not knowing her son's whereabouts cannot be attributed to the State party insofar as the disappearance itself was not committed by its agents and it acted immediately, and with due diligence, when it learned of the facts. The State party adds that it has provided the necessary support to Mr. Rivera Hidalgo's family members through the Executive Commission for Victim Support.

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

7.1 In her comments of 25 July 2019 on the State party's observations on the merits, the author comments on the information provided by the State party and on new developments up to that date. Firstly, the author affirms that there is evidence that two patrol cars belonging

<sup>24</sup> The State party cites *Tripathi v. Nepal* (CCPR/C/112/D/2111/2011), para. 7.2.

<sup>25</sup> Inter-American Court of Human Rights, *Rochela Massacre v. Colombia*, judgment of 11 May 2007, Series C No. 163, para. 78.

to the San Nicolás de los Garza police force were less than 200 m from her home at around 1 a.m. on the day of the incident.<sup>26</sup> The State party omits this information from its observations and does not appear to have taken it into account in the investigation. Secondly, the author alleges that the support provided by the Executive Commission for Victim Support cannot be considered comprehensive or effective, particularly because, despite her request, there were long periods during which she received no support and because her request for medical care went unanswered. Thirdly, the author adds that, on 20 May 2019, the First District Criminal Court in the state of Nuevo León decided to suspend the *amparo* proceedings for a period of one year, as none of the actions aimed at finding her son had been effective. This demonstrates the ineffectiveness of the *amparo* proceedings and gives the lie to the State party's assertion that the measures taken have been effective and adequate. Fourthly, the author alleges that she has not been informed of the judgment against Mr. G.R. Moreover, according to the information provided by the Executive Commission for Victim Support, there is no indication that any useful information has emerged or been put forward in these proceedings that might serve to establish Mr. Rivera Hidalgo's fate and whereabouts. The offences for which Mr. G.R. was convicted include that of unlawful deprivation of liberty in the form of kidnapping but not that of causing the disappearance of a person. Thus, there is no indication that his conviction is related to Mr. Rivera Hidalgo's disappearance and, even if it were, this would not relieve the State of its obligation to find Mr. Rivera Hidalgo and prosecute all those responsible for his disappearance.

7.2 The author adds that, on 23 May 2019, she met with her representatives and those of the prosecutor's office of the state of Coahuila, the Attorney General's Office, the National Human Rights Commission of Nuevo León, the National Search Commission and the Executive Commission for Victim Support. On that occasion, the representatives of the prosecutor's office of the state of Coahuila informed her that the body found in 2013 was not that of Mr. Rivera Hidalgo. However, it was also stated that it had not been possible to conduct a test to compare the genetic profile of the body found with that of Mr. Rivera Hidalgo's family members. The author alleges that the contradictions and lack of effective collaboration between the authorities of the State party are a demonstration of official indifference to her suffering and anguish.

7.3 As to the observations on the merits, the author cites international jurisprudence that attributes "a high probative value to the statements of the witnesses, in the context and the circumstances of a case of forced disappearance ... together with pertinent logical inferences, as well as its association with a widespread practice of disappearances".<sup>27</sup> The author argues that the existing evidence, the general context in the State party, and the particular context in the state of Nuevo León reverse the burden of proof. However, the State party has not commented on the above-mentioned context and has not provided any evidence to refute the author's allegations (paras. 3.1 and 3.2 above).

7.4 With regard to the attribution of enforced disappearance to the State party, the author points out a number of contradictions in the State party's observations. The first concerns the State party's affirmation that the evidence gathered indicates that the police were not present in the area on the day of the events. The second relates to the fact that the State party claims that the disappearance was not committed by State agents while acknowledging that one line of investigation concerns the possibility that police officers might have been involved in it. Third, the State party claims that the author's testimony has not been substantiated but has not been able to discredit it either. The author adds that it is precisely because no thorough investigation has been carried out, for reasons attributable to the State party, that it has not been possible to establish the direct or indirect involvement of State agents with certainty.

7.5 The author notes that the State party claims to have conducted a prompt, impartial and thorough investigation. However, it acknowledges that, on 27 July 2017, the National Human Rights Commission of Nuevo León found that there had been an unjustified delay in the investigation of the facts by the authorities and that no serious and exhaustive investigation had been conducted. This is demonstrated by the fact that, more than eight years after Mr.

<sup>26</sup> According to the documentation provided, patrol cars A05 and A10 were at a distance of 200 m from the author's home at 2.35 a.m. and 3.17 a.m. respectively.

<sup>27</sup> Inter-American Court of Human Rights, *Alvarado Espinoza et al. v. Mexico*, para. 169.

Rivera Hidalgo's enforced disappearance, his fate and whereabouts are unknown and the perpetrators remain unpunished. The author notes that the State party does not explain what measures correspond to each line of investigation or what objectives are being pursued by each one. The author also argues that, while investigation for the purpose of identifying the perpetrators is an obligation of means, establishing the disappeared person's fate and whereabouts in a case of enforced disappearance is an obligation of result.<sup>28</sup> The State party has violated both obligations. For the same reason, the State party cannot claim that it is not responsible, under article 7 of the Covenant, for the harm caused to the author's integrity, as this harm is a direct consequence of the attitude of indifference shown by the State authorities and the failure to conduct an effective investigation, and is entirely independent of whether the State is found to be responsible for her son's enforced disappearance.

### **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 investigations are still under way, particularly those conducted by the Office of the State Attorney General of Nuevo León and the Attorney General's Office. However, the Committee also takes note of the author's claims that domestic remedies have not been effective because their processing has been unreasonably prolonged, so that the fate and whereabouts of Mr. Rivera Hidalgo 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.<sup>29</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 10 years have elapsed since the disappearance of Mr. Rivera Hidalgo and the submission of the initial complaints by the author 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 these 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>30</sup>

8.5 As all admissibility requirements have been met, and given that the author's complaints under articles 2 (3), 6 (1), 7, 9, 16 and 17 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*

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 takes note of the author's allegations that the facts of the present case constitute an enforced disappearance, since: (a) Mr. Rivera Hidalgo was deprived of his liberty when he was taken from his home; (b) the act was perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State; and (c) the State party denies participating in the events or is concealing Mr. Rivera

<sup>28</sup> The author cites the individual opinion of Fabián Salvioli (partly dissenting) in *Prutina et al. v. Bosnia and Herzegovina*, para. 3.

<sup>29</sup> *T.K. v. France* (CCPR/C/37/D/220/1987), para. 8.3.

<sup>30</sup> See, inter alia, *Padilla García et al. v. Mexico* (CCPR/C/126/D/2750/2016), para. 8.4.

Hidalgo's fate or whereabouts by failing to investigate the events properly. The Committee recalls its jurisprudence to the effect that the burden of proof cannot fall exclusively on the author 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.<sup>31</sup>

9.3 In the present case, the Committee notes the author's assertion that some of the men who broke into her home were wearing vests marked "Escobedo Police" and that they claimed to have been sent by the Government (para. 2.3 above). At the same time, the Committee notes the substantiated information that there was a police presence in the vicinity of her home following the disappearance (para. 7.1 and footnote 27 above). The Committee also notes the information submitted by the author on the general context of enforced disappearances in the State party (footnote 1 above) and, in particular, in the state of Nuevo León (footnote 2 above). The Committee further notes the alleged links between the security forces of San Nicolás de los Garza and organized criminal groups, particularly the person alleged to be responsible for Mr. Rivera Hidalgo's disappearance (para. 2.11 above). In the light of the foregoing, the Committee is of the view that the circumstantial evidence of the involvement of State agents in the present case is sufficient to reverse the burden of proof and require the State party to refute that evidence and the allegation that the disappearance is attributable to it, by means of an investigation carried out with due diligence.<sup>32</sup>

9.4 The Committee notes that the State party has failed to demonstrate that the investigation into Mr. Rivera Hidalgo's disappearance was carried out with due diligence, either before or after this point was raised by the National Human Rights Commission of Nuevo León (paras. 4.2, 5.1 and 7.5 above). The Committee notes that, in the absence of an answer by the State party to the allegations relating to the context, in particular the specific context of the state of Nuevo León and, especially, the alleged links between officers of the San Nicolás de los Garza police and the person said to be responsible for Mr. Rivera Hidalgo's disappearance, the Committee gives due weight to the author's allegations.<sup>33</sup> Lastly, the Committee notes the author's allegations regarding the contradiction between the State party's claim that the acts were not committed by State agents and its acknowledgement that one of the lines of investigation does in fact concern their possible participation, and, moreover, that it is the lack of a thorough investigation that has made it impossible to rule out the direct or indirect involvement of State agents, based on the existing circumstantial evidence (para. 7.4 above). In the light of the foregoing, the Committee considers that the author has sufficiently substantiated her allegations and that the State party has not duly contested the claim that Mr. Rivera Hidalgo's disappearance is attributable to the State.<sup>34</sup> Accordingly, the Committee considers that the acts described constitute enforced disappearance attributable to the State party.<sup>35</sup>

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,<sup>36</sup> 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.<sup>37</sup> 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

<sup>31</sup> For example, *Padilla García et al. v. Mexico*; *Kandel et al. 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); *Devi Sharma et al. v. Nepal* (CCPR/C/122/D/2364/2014).

<sup>32</sup> *Molina Arias v. Colombia*, para. 9.3.

<sup>33</sup> *Ibid.*, para. 9.2.

<sup>34</sup> *Ibid.*, para. 9.3.

<sup>35</sup> See article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>36</sup> *Padilla García et al. v. Mexico*, para. 9.5.

<sup>37</sup> See in this regard the settled jurisprudence of the Committee since the case of *Sarma v. Sri Lanka* (CCPR/C/78/D/950/2000), para. 9.3, as well as general comment No. 36 (2018), para. 58.

State is accountable.<sup>38</sup> In the present case, insofar as the disappearance is attributable to the State party, the State party has failed to take the necessary steps to preserve Mr. Rivera Hidalgo's life, in violation of article 6 (1) of the Covenant.

9.6 The Committee also takes note of the author's claim that the acts constitute treatment contrary to article 7 of the Covenant in respect of Mr. Rivera Hidalgo, because of the severe suffering, the uncertainty and the effect on his physical and psychological integrity resulting from the enforced disappearance. The Committee also notes that, as can be inferred from the facts, Mr. Rivera Hidalgo may well have been subjected during his deprivation of liberty to physical violence that may constitute 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. Rivera Hidalgo. The Committee also notes the author's claim concerning the anguish and suffering caused to her by her son's disappearance and the search for justice, particularly in connection with her discovery, in 2018, that the authorities had been in possession of a body since 2013 that could be that of Mr. Rivera Hidalgo and that, to date, no expert examinations have been carried out to identify the body beyond doubt. In the absence of any information from the State party on this point, the Committee considers that the facts as described disclose a violation of article 7 of the Covenant in respect of the author.<sup>39</sup>

9.7 With regard to the alleged violation of article 9 of the Covenant, the Committee recalls its general comment No. 35 (2014), in which it noted that disappearance constitutes a particularly aggravated form of arbitrary detention.<sup>40</sup> In the present case, insofar as the disappearance is attributable to the State party, the Committee considers that Mr. Rivera Hidalgo's deprivation of liberty violated his rights under article 9 of the Covenant.

9.8 The Committee also recalls that the intentional removal of a person from the protection of the law constitutes a denial of his or her right to recognition as a person before the law, in particular if all the efforts made by the victim's relatives to exercise their right to effective remedies have been systematically impeded, in violation of article 16 of the Covenant.<sup>41</sup> In the present case, the Committee observes that the State party has not furnished any explanation concerning the fate or whereabouts of Mr. Rivera Hidalgo and that, in particular, it has not carried out an investigation that meets the standards of due diligence. The Committee therefore finds that the enforced disappearance of Mr. Rivera Hidalgo 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.

9.9 The Committee also notes that the author affirms that the perpetrators of her son's disappearance broke into her home in the early hours of the morning, stole various valuable items (including two vehicles), destroyed objects and damaged the house and her farm, which amounted to unlawful interference with her privacy. In the absence of observations by the State party, and taking into account all the circumstances of the present case, the Committee considers that these acts constituted arbitrary and unlawful interference with the author's privacy and home.<sup>42</sup> Accordingly, the Committee finds that the State party has violated the author's rights under article 17 of the Covenant.

9.10 Lastly, the Committee notes the author's claim that the facts also constitute a violation of article 2 (3) of the Covenant, read in conjunction with the above-mentioned articles, insofar as she did not have access to an effective remedy. The Committee also notes the State party's assertion that its legal obligation to investigate is an obligation of means and that it conducted a prompt, impartial and thorough investigation with due diligence from the moment that it became aware of the facts. However, the Committee notes that, in 2017, the National Human Rights Commission of Nuevo León itself found that there had been an unjustified delay in the investigation of the facts by the authorities and that no serious and exhaustive

<sup>38</sup> See *Padilla García et al. v. Mexico*, para. 9.6, and general comment No. 36 (2018), para. 58.

<sup>39</sup> See *Padilla García et al. v. Mexico*, para. 9.7, and general comment No. 36 (2018), para. 58.

<sup>40</sup> Para. 17. See also general comment No. 36 (2018), para. 58.

<sup>41</sup> See *Padilla García et al. v. Mexico*, para. 9.9, and general comment No. 36 (2018), para. 58.

<sup>42</sup> See in this regard *Lumbala Tshidika v. Democratic Republic of the Congo* (CCPR/C/115/D/2214/2012), para. 6.7.

investigation had been conducted (paras. 4.2, 5.1 and 7.5 above). The Committee considers that this is sufficient to establish, in the absence of any evidence to the contrary, that the right to an effective remedy has been violated. However, it notes that the State party has also failed to show that it acted with due diligence, even after that Commission had determined that the investigation had been unjustifiably delayed. This is because the State party has failed to show that a single one of the 20 persons alleged to have been directly involved in Mr. Rivera Hidalgo's disappearance has been arrested or prosecuted for that disappearance.<sup>43</sup> The Committee reiterates its observations on the body found in 2013, the lack of steps taken to definitively identify the body, and the lack of information from the State party on this point (paras. 5.2 and 7.2 above). In light of the foregoing, the Committee considers that, 10 years after the authorities received the complaint of Mr. Rivera Hidalgo's enforced disappearance, the investigations carried out have been ineffective in shedding light on the circumstances of his disappearance, determining his fate and whereabouts and identifying those responsible.<sup>44</sup> The Committee therefore considers that the State party has violated Mr. Rivera Hidalgo's right to an effective remedy under article 2 (3) of the Covenant, read in conjunction with articles 6, 7, 9 and 16. The Committee considers that the same conclusion must be reached in respect of the author's claims concerning her right under the same article 2 (3) of the Covenant, read in conjunction with articles 7 and 17.

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. Rivera Hidalgo; and of articles 7 and 17 of the Covenant, and article 2 (3) read in conjunction with articles 7 and 17, in respect of the author of the communication.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to: (a) conduct a prompt, effective, thorough, independent, impartial and transparent investigation into the circumstances of Mr. Rivera Hidalgo's disappearance; (b) ensure the release of Mr. Rivera Hidalgo if he is still alive; (c) if Mr. Rivera Hidalgo is deceased, 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 search and tracking process; (e) provide the author 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; and (g) grant the author, as well as Mr. Rivera Hidalgo if he is still alive, full reparation, including adequate compensation for the violations suffered and medical and psychological support. The State party is also under an obligation to take steps to prevent similar violations from occurring in the future by ensuring that any act of enforced disappearance is promptly, effectively and thoroughly investigated in an independent, impartial and transparent manner.

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 there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about 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.

---

<sup>43</sup> The State party mentions only the arrest and prosecution of Mr. G.R. but has not specified why he was arrested or provided any other information relating to his alleged subsequent conviction, which was for offences not including that of disappearance (paras. 6.2 and 7.1 above).

<sup>44</sup> See also general comment No. 36 (2018), 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.