



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2766/2016\*, \*\*

<i>Communication submitted by:</i>	Midiam Iricelda Valdez Cantú and María Hortencia Rivas Rodríguez, on their own behalf and on behalf of Víctor Manuel Guajardo Rivas, their missing partner and son (represented by i(dh)eas Litigio Estratégico en Derechos Humanos A.C.; Comisión Mexicana de Defensa y Promoción de los Derechos Humanos A.C.; and Familias Unidas en la Búsqueda y Localización de Personas Desaparecidas A.C.)
<i>Alleged victims:</i>	The authors and Víctor Manuel Guajardo Rivas (missing son and partner of the authors)
<i>State party:</i>	Mexico
<i>Date of communication:</i>	10 November 2015
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 15 March 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	24 October 2019
<i>Subject matter:</i>	Enforced disappearance
<i>Procedural issues:</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; right of persons deprived of their liberty to be treated with humanity; recognition as a person before the law; right not to be subjected to arbitrary or unlawful interference with one's privacy

\* Adopted by the Committee at its 127th session (14 October–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, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



*Articles of the Covenant:* 2 (3), 6 (1), 7, 9, 10 (1), 16 and 17

*Articles of the Optional Protocol:* 5 (2) (b)

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

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

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

#### *Disappearance of Mr. Guajardo Rivas*

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

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

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

2.3 On the same day, 10 July 2013, the authors lodged a complaint with the Office of the Attorney General of the State of Coahuila regarding the enforced disappearance of Mr. Guajardo Rivas and an inquiry was launched. Even though in the complaint the authors identified those responsible as members of GATE, the public prosecutor responsible for taking their statement attempted to change the complaint to indicate that those responsible were "an armed group dressed in black", connected to organized crime. Ms. Rivas Rodríguez refused to sign the complaint and asked for the facts to be shown as they had been reported. In addition, the complaint was registered as an official report and not as a preliminary investigation.<sup>1</sup> Thus, although the authors indicated that they were able to identify the perpetrators of the disappearance, facial composites were not made until almost a year later. Furthermore, the information obtained was not checked against the list of GATE officers, who were never investigated or called to make a statement. In addition, the authors provided the public prosecutors with a penknife used by the GATE police officers to break into their home on the night of the disappearance. The relevant authorities did not

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<sup>1</sup> An official report is the document in which the complaint is recorded. It implies that the authority has received the information as notice of a possible criminal act, but is not conducting a formal investigation. That is initiated only after the official report has been submitted for preliminary investigation, which allows the authorities to take the relevant measures to investigate the offence.

conduct an expert examination of the penknife and informed the authors in September 2014 that it had been mislaid. In parallel, on 7 and 10 April 2014, Ms. Rivas Rodríguez lodged a complaint with the National Human Rights Commission<sup>2</sup> and the State of Coahuila Human Rights Commission,<sup>3</sup> respectively; both complaints remain open and have not yielded any results.

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

2.5 On 14 October 2013, the local criminal proceedings office of the Office of the Attorney General of the Republic launched a preliminary investigation in relation to the facts described in the communication. However, it subsequently declined jurisdiction and, on 8 January 2014, it transferred the preliminary investigation to the Office of the State Attorney General, where it was combined with the inquiry launched on 10 July 2013 (even though at that time it still had the status of an official report).<sup>4</sup>

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

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

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

2.9 The authors assert that Mr. Guajardo Rivas' disappearance took place in the context of the security policy known as the "war on drug trafficking". That policy had led to a significant increase in human rights violations by soldiers and police officers, who were alleged to be responsible for extrajudicial executions and cases of enforced disappearance throughout the country.<sup>6</sup> In particular, there were reported to be at least 1,475 missing persons investigations in Coahuila.<sup>7</sup>

<sup>2</sup> CNDH/1/2014/2802/Q.

<sup>3</sup> CDHEC/049/2013/PN/OAE.

<sup>4</sup> Which would later be submitted for preliminary investigation under No. 054/2013.

<sup>5</sup> Preliminary investigation AP/PGR/SDHPDSC/UEBPD/M14/17/2015.

<sup>6</sup> The authors cite the report of 7 October 2015 by the United Nations High Commissioner for Human Rights on his visit to Mexico in 2015: "For a country that is not engaged in a conflict, the estimated figures are simply staggering [...]. At least 26,000 people missing, many believed to be as a result of enforced disappearances, since 2007"; "98 per cent of all crimes in Mexico remain unsolved, with the great majority of them never even properly investigated" (available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16578>). They also mention the concerns expressed by the Committee on Enforced Disappearances (according to which there is, in Mexico, a "situation of widespread disappearances in much of the State party's territory, many of which may be classified as enforced disappearances", the Special Rapporteur on torture, and

### The complaint

3.1 The authors claim that Mr. Guajardo Rivas has been a victim of a violation of his rights under article 6 (1) of the Covenant given that the last time they saw him he was being held, seriously injured, at the premises of GATE, and, since then, the authorities have refused to inform them of the circumstances in which their family member is being held or whether he is still alive.<sup>8</sup>

3.2 With regard to the violation of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the authors contend that the enforced disappearance of persons is in itself a form of torture and, thus, contrary to article 7 of the Covenant.<sup>9</sup> In addition, the anguish and suffering experienced by the authors as a result of the ongoing uncertainty surrounding the disappearance of their family member constitutes treatment contrary to article 7 with respect to them.<sup>10</sup>

3.3 In relation to article 9 of the Covenant, the authors claim that their family member was arrested without a warrant, was not informed of the reasons for his arrest, was not charged, and was given no chance to appear before a judicial authority in order to challenge the lawfulness of his detention.<sup>11</sup> Superintendent R.D.S. himself, responding to the request made by the judge responsible for the *amparo* proceedings, explained that GATE did not keep any record of detainees.

3.4 The authors also claim that there has been a violation of article 10 of the Covenant, insofar as the testimonies of persons who were detained on the same day at the GATE premises indicate that Mr. Guajardo Rivas was not treated with humanity or with respect for his dignity.<sup>12</sup>

3.5 With regard to article 16 of the Covenant, the authors claim that there has been a violation of the right to recognition as a person before the law, since their family member was in the hands of the authorities when last seen and all their efforts to obtain access to potentially effective remedies have been impeded.<sup>13</sup>

3.6 With regard to article 17 of the Covenant, the authors claim that the entry of State agents into their home, early in the morning and without a warrant, causing damage and removing jewellery, money and other objects of value constituted unlawful interference with the victim's privacy, family and home.<sup>14</sup>

3.7 Lastly, in view of the failure to conduct an effective investigation, the authors also allege a violation of article 2 (3), read in conjunction with articles 6 (1), 7, 9, 10 (1), 16 and 17 of the Covenant. The authors explain that the right to an effective remedy for the violation of each of the rights mentioned above was violated because the State did not initiate an independent, impartial, ex officio, prompt, appropriate, serious, thorough and effective investigation.<sup>15</sup> The authors mention that, although they lodged the complaint on the day of the detention, the authorities did not immediately take the necessary measures. Furthermore, during the first six months following the disappearance, no steps were taken to locate the victim, even though the authors had seen him enter the GATE premises.

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the Inter-American Commission on Human Rights, according to which the magnitude of the problem of enforced disappearance in the country is alarming: "many cases of disappearance are not reported, because family members distrust the State's ability to respond [or] fear that they will suffer reprisals. [...] In cases in which complaints are filed, the response from the authorities falls seriously short (Preliminary Observations on the IACHR Visit to Mexico, 2 October 2015, available at [https://www.oas.org/en/iachr/media\\_center/PReleases/2015/112A.asp](https://www.oas.org/en/iachr/media_center/PReleases/2015/112A.asp)).

<sup>7</sup> Between January 2014 and September 2015, 45 were launched with the Office of the Attorney General of the Republic; and 1,430 were launched with the Office of the State Attorney General between 2007 and July 2015.

<sup>8</sup> The authors cite, inter alia, *Sassene v. Algeria* (CCPR/C/112/D/2026/2011).

<sup>9</sup> The authors cite, inter alia, *Mojica v. Dominican Republic* (CCPR/C/51/D/449/1991), para. 5.7.

<sup>10</sup> The authors cite, inter alia, *Katwal v. Nepal* (CCPR/C/113/D/2000/2010), para. 11.7.

<sup>11</sup> The authors cite, inter alia, *Berzig v. Algeria* (CCPR/C/103/D/1781/2008), para. 8.7.

<sup>12</sup> The authors cite, inter alia, *Basnet v. Nepal* (CCPR/C/112/D/2051/2011), para. 8.6.

<sup>13</sup> The authors cite, inter alia, *Bhandari v. Nepal* (CCPR/C/112/D/2031/2011), para. 8.8.

<sup>14</sup> The authors cite, inter alia, *Kroumi v. Algeria* (CCPR/C/112/D/2083/2011), para. 8.10.

<sup>15</sup> The authors cite, inter alia, *Pestaño v. Philippines* (CCPR/C/98/D/1619/2007), para. 7.2.

Similarly, although Ms. Valdez Cantú said that she would be able to recognize the officers who took Mr. Guajardo Rivas away, the necessary identification process was not carried out until almost a year after the events. Neither was there any expert examination of the penknife used to force the entrance door into the home; it has now been mislaid. The initial failure to act and the lack of due diligence on the part of the State mean that it is almost impossible to determine Mr. Guajardo Rivas' whereabouts. Lastly, the authors cite paragraph 4 of the Committee's general comment No. 6 (1982) on the right to life, according to which "States parties should also take specific and effective measures to prevent the disappearance of individuals [and] establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life", and paragraph 15 of general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, according to which a "failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant".

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

3.9 The authors maintain that the communication meets the admissibility criteria under the exception provided for in article 5 (2) (b) of the Optional Protocol, in that the appropriate remedies have been applied for but have been unreasonably prolonged and important evidence has been lost. In particular, the authors explain that, because the criminal complaint was initially given the status of an official report, steps were not taken to determine the whereabouts of Mr. Guajardo Rivas within the first six months, a period that is critical in the investigation of an enforced disappearance. Thus, two and a half years after his disappearance, and despite the existence of two preliminary investigations, one at the local level (by the Office of the Attorney General of the State of Coahuila) and the other at the federal level (by the Office of the Attorney General of the Republic), the necessary measures had not been taken to identify those responsible. With regard to the whereabouts of Mr. Guajardo Rivas, the *amparo* proceedings and the complaints filed with human rights commissions at the state and national levels have also shown the absence of any type of progress, thereby proving to be ineffective. The authors cite the Committee's jurisprudence that if remedies are unreasonably prolonged or are proven to be ineffective, there is no obstacle to the consideration of a communication.<sup>16</sup>

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

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

4.2 First, the State party explains that the facts submitted in the communication are subject to investigations under way at the federal and local levels, the aim of which is to locate Mr. Guajardo Rivas. As part of those investigations, the authorities are continuing to take the necessary measures to identify his whereabouts. At the local level, with regard to the inquiry launched by the Office of the State Attorney General on 10 July 2013, the State party emphasizes that the case was submitted for preliminary investigation of the crimes of enforced disappearance and aggravated kidnapping on 24 June 2015, once three individuals, J.J.M.S., H.A.O.E. and M.A.M.G., had been identified as suspects. As part of that investigation, field searches were carried out in October 2015, January 2016 and June 2016 in order to attempt to identify the disappeared person's whereabouts. At the federal level, the State party also lists various steps taken by the Office of the Attorney General of the Republic between February 2015 and May 2016 as part of the preliminary investigation,

<sup>16</sup> Ibid, among others.

such as collecting blood samples, taking statements from members of the disappeared person's family and requesting information from other authorities, all of which reported that they had no information concerning him. In addition, action by the local authorities has enabled the identification of the telephone number from which a call is alleged to have been made to one of the authors, demanding a sum of money as a ransom for her son, as well as the name in which that telephone number is registered.<sup>17</sup>

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

4.4 The State party maintains that the supposed delay in the investigation should be assessed in accordance with the complexity of the facts and taking into account that international bodies, such as the Committee, do not have jurisdiction to determine whether investigation methods are appropriate, but that it is the responsibility of the courts of the State party to examine the facts and the evidence.<sup>18</sup>

4.5 Consequently, given that there are still two open investigations concerning the authors' family member, in which measures have been taken continuously to the present time, domestic remedies have not been exhausted and it cannot be concluded that there is an unreasonable delay. Furthermore, the family members of Mr. Guajardo Rivas, including the authors, have been included in the National Registry of Victims and have been provided with psychological assistance, labour counselling and educational support. They are also able to access medical assistance if they so wish. Consequently, if the Committee finds the communication admissible and considers it on its merits, it will be violating the principle of subsidiarity in international human rights law.<sup>19</sup>

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

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

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<sup>17</sup> The State party does not provide any further information on its proceedings in relation to this point.

<sup>18</sup> The State party cites various cases of the Inter-American Court of Human Rights, inter alia, *González Medina and family v. Dominican Republic*, Preliminary objections, merits, reparations and costs, Judgment of 27 February 2012, para. 256.

<sup>19</sup> The State party cites *Arboleda Saldarriaga v. Colombia* (CCPR/C/87/D/1120/2002), para. 7.3, among other cases of the International Court of Justice, the European Commission of Human Rights and the Committee on the Elimination of Discrimination against Women.

5.2 With regard to the indirect *amparo* proceedings, the authors claim that on two occasions, in 2013 and 2015, the judge requested information from various local and federal authorities regarding the disappearance of Mr. Guajardo Rivas, but without success. Subsequently, on 3 June 2016, the judge ordered new measures, requesting the Office of the State Attorney General to collect DNA samples from family members in order to allow the possible identification of remains, which to date has not been carried out.<sup>20</sup> On the same date, the judge requested further information from local and federal authorities, including the security forces.<sup>21</sup> Even though the judge repeated that request to various authorities on three occasions, the said measures proved ineffective to clarify the circumstances surrounding the disappearance of Mr. Guajardo Rivas. Between June and July 2016, only six authorities responded to the judge's request, simply stating that they had no information regarding Mr. Guajardo Rivas or his disappearance. In particular, the authors emphasize that the authority responsible for GATE provided no relevant information on any of those three occasions. Given this authority's refusal to cooperate with the *amparo* court and supply information that it alone could provide, the court lacked information that would have allowed it to locate the disappeared person. The municipal police commander and the General Legal Director of the Coahuila State Commission for Public Security did not provide any information to the *amparo* court either. Furthermore, there is no record in the *amparo* file of any visits to or judicial inspections of the offices of GATE or police agencies that might have been connected with GATE. The *amparo* court therefore adopted a passive stance, merely accepting reports that provided no information, and took no measures aimed at searching for the disappeared person. In the light of the above, the authors claim that the limited action taken by the *amparo* court over a three-year period has clearly proven to be ineffectual, and the investigation has been neither thorough nor effective.<sup>22</sup>

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

<sup>20</sup> The collection of blood samples to which the State party referred in its observations on admissibility was carried out as part of the federal investigation conducted by the Office of the Attorney General of the Republic.

<sup>21</sup> The authors provide a list of 40 authorities.

<sup>22</sup> The authors recall the Committee's jurisprudence regarding the need for a thorough and effective investigation into cases of enforced disappearance, which should be conducted as quickly as possible: *Zerrougui v. Algeria* (CCPR/C/108/D/1796/2008), para. 7.4; and general comment No. 35 (2014) on liberty and security of person, para. 47.

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

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

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

6.2 First, the domestic remedies are effective in terms both of their accessibility for the victim and their effectiveness to restore the enjoyment of rights.<sup>23</sup> The investigations at both the federal and local levels, and also the *amparo* proceedings, remain operational from the legal standpoint and in practice. The investigations undertaken at the local level allowed criminal proceedings for the crime of disappearance of persons to be brought, on 14 January 2017, in case 509/2016 before the Civil Court of First Instance, against the suspects J.J.M.S., H.A.O.E. and M.A.M.G., who at the time of the events were working as GATE officers. This shows that the domestic remedies meet the characteristics of accessibility and effectiveness and remain active, yielding positive results for the investigation of the enforced disappearance of Mr. Guajardo Rivas.

6.3 Second, the State party explains that the obligation to investigate and bring those responsible to justice is not an obligation of result, but of means, and that it has operated with due diligence, carrying out a prompt, impartial and thorough investigation.<sup>24</sup> The investigation was prompt since when the complaint was lodged on 10 July 2013, two measures were immediately taken: (a) an investigation order was issued instructing the Chief of the Investigative Police of Coahuila to search for and locate Mr. Guajardo Rivas; and (b) official letters of cooperation were sent to the various municipal, state and federal police forces, including GATE and GATEM. In addition, on 4 February, the Office of the Attorney General of the Republic launched a preliminary investigation in the light of the facts reported by Ms. Rivas Rodríguez. Investigations were therefore begun without any delay. The investigation was also impartial since, even though the suspects were State agents at the time the acts were committed, all State authorities have taken forward the investigation. As for whether the investigation was thorough, at the local level the Office of the State Attorney General took steps to locate the whereabouts of Mr. Guajardo Rivas, and, with the help of the victim's family, has now identified three individuals probably responsible for the disappearance, in respect of whom criminal proceedings have been brought and warrants issued for their arrest. At the federal level, the work of the Office of the Attorney General of the Republic has been carried out in coordination with the Office of the State Attorney General, which has led to positive results in terms of identification of the probable perpetrators.<sup>25</sup> In addition, contrary to what the authors have indicated, the *amparo* proceedings proved effective since, as a result of the requests for information sent to the responsible authorities, the Office of the State Attorney General brought criminal

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<sup>23</sup> The State party cites *Castañeda Gutman v. Mexico*, Preliminary objections, merits, reparations and costs, Judgment of 6 August 2008, Series C No. 184, para. 103.

<sup>24</sup> The State party cites, inter alia, *Kožljak v. Bosnia and Herzegovina* (CCPR/C/112/D/1970/2010), para. 9.2.

<sup>25</sup> The State party again lists the measures set out in the written statement on admissibility, adding those taken between June and December 2016, which include locating the suspects in the Social Rehabilitation Centre of Villa Aldama, Veracruz, further to a request by Ms. Rivas Rodriguez, and entering the victims in the National Registry of Victims of the Executive Commission for Victim Support.

proceedings under the preliminary investigation and the competent court issued warrants for the suspects' arrest.

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

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

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

7.2 As for the State party's assertion that the investigations meet the standards and obligations laid down in the Covenant, the authors explain that this cannot be maintained in respect of any of the investigations carried out by the local or federal authorities. First, the investigation by the Office of the State Attorney General was launched as a preliminary investigation only in June 2015, almost two years after the family members formally lodged the complaint. Furthermore, (a) criminal proceedings were not brought for the crime of enforced disappearance but rather for that of disappearance of persons;<sup>26</sup> (b) even though the version of events given by the Office of the State Attorney General itself expressly points to the participation of more than three police officers in the enforced disappearance of Mr. Guajardo Rivas, criminal proceedings were only brought against the three initial suspects;<sup>27</sup> (c) even though it can be inferred from the facts that Mr. Guajardo Rivas was tortured before his disappearance, the three police officers against whom criminal proceedings were brought were not accused of this act;<sup>28</sup> (d) the arrest warrants against the suspects were not acted upon;<sup>29</sup> and (e) to date there has been no conviction establishing with clarity and certainty all those responsible for the disappearance, the way in which the events occurred and under what circumstances, and the fate or whereabouts of Mr. Guajardo Rivas.

7.3 Second, two years after the preliminary investigation was launched by the Office of the State Attorney General, no steps have been taken to search for Mr. Guajardo Rivas in specific locations nor has any order been given to search for his body in places previously identified by a clear search strategy or definite line of investigation.<sup>30</sup>

<sup>26</sup> In the criminal law of the State of Coahuila, enforced disappearance is not a separate offence but rather an aggravating circumstance in relation to the criminal offence of disappearance of persons.

<sup>27</sup> The State party, in its investigation, merely took statements from Ms. Valdez Cantú, noted the photographic identification provided by her and obtained testimony from her minor children, without taking, *ex officio*, any other action or measure aimed at establishing the identity of the other police officers who, based on the description of the events provided by the Office of the State Attorney General itself, participated in the crime. Nor did it carry out an investigation or bring criminal proceedings against the supervisors who failed to keep a record of persons detained by GATEM and GATE, a practice that encouraged enforced disappearance and subsequent impunity. The authors cite the Declaration on the Protection of All Persons from Enforced Disappearance, which requires an official register to be maintained in every place of detention (art. 10 (3)).

<sup>28</sup> Based on testimonies in the file, Mr. Guajardo Rivas was beaten and electrocuted by the accused individuals and other persons. According to the Criminal Code of the State of Coahuila, anyone who "authorizes, orders, supports or allows" a disappearance is also guilty of the crime of disappearance of persons.

<sup>29</sup> Two of the suspects have been detained for another offence, and the third is evading justice. According to the Office of the State Attorney General, the arrest warrant against the two officers cannot be acted upon, and proceedings cannot be brought against them for enforced disappearance, until they have served the sentence for the other offence.

<sup>30</sup> For example, no searches have been conducted in the stables that the Office of the State Attorney General itself identifies as the place where Mr. Guajardo Rivas was taken by the GATEM forces.

7.4 Third, the *amparo* proceedings were dismissed on 30 December 2016, owing to the start of the criminal proceedings on 24 November 2016. The State party claims that the *amparo* proceedings were effective because they resulted in the criminal proceedings brought by the Office of the State Attorney General and the subsequent issue of arrest warrants, and also that the *amparo* proceedings were suspended to avoid interference with the criminal investigation. That is incorrect and biased, since (a) the purpose of *amparo* proceedings is not to identify the perpetrators but to conduct an immediate and thorough search for the disappeared person; and (b) the obligation of the judge to take all necessary actions and measures to search for and find Mr. Guajardo Rivas or discover his fate or whereabouts would not in any way interfere with the conduct of criminal proceedings.<sup>31</sup>

7.5 Meanwhile, the authors add that none of the victim protection measures mentioned by the State party correspond to measures of full reparation, as defined in article 24 (4) and (5) of the International Convention for the Protection of All Persons from Enforced Disappearance or in the Mexican Victims Act (which clearly distinguishes assistance and support measures, such as those ordered by the State in respect of the authors, on the one hand, and full reparation measures, on the other).<sup>32</sup>

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

#### **Additional submissions by the parties**

##### *State party's additional observations*

8.1 On 27 November 2018, the State party reported on the measures taken between March 2017 and June 2018 by the Office of the Attorney General of the Republic under the federal investigation. Those measures include actions to identify persons who contacted the author Ms. Rivas Rodríguez by telephone in an attempt to extort money from her in relation to the disappearance of Mr. Guajardo Rivas; the identification by Ms. Rivas Rodríguez of two probable perpetrators of the disappearance; a visit by staff members of the Office of the Special Prosecutor for the Investigation of Crimes of Enforced Disappearance, established as part of the Office of the Attorney General of the Republic on 16 February 2018, to the prosecutor's office of the State of Coahuila, and a written statement by that prosecutor's office indicating that it continues with its efforts to search for and locate Mr. Guajardo Rivas, as well as others responsible for the crime in question. With regard to the criminal proceedings, it adds information concerning the warrants for the arrest of J.J.M.S., H.A.O.E. and M.A.M.G. The arrest of the first two individuals has been requested,<sup>33</sup> while in the case of the third, orders to search for, locate and arrest the suspect, including a communication to the International Criminal Police Organization-INTERPOL, have been sought. For that reason, the State party reaffirms that the communication is inadmissible since these proceedings remain current to date and are appropriate means for establishing Mr. Guajardo Rivas' whereabouts and punishing those responsible for his disappearance.

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

<sup>31</sup> The authors cite a report of the Working Group on Enforced or Involuntary Disappearances on its mission to Peru, in which it is explained that the criminal investigation and the search have two different objectives; the first focuses on collecting and using evidence and the second on finding and identifying the disappeared person (A/HRC/33/51/Add.3, para. 26).

<sup>32</sup> Articles 61 to 78 of the Victims Act.

<sup>33</sup> The State party does not explain whether, even though the suspects are serving a sentence for another offence, they could in the end be tried before they complete that sentence.

*Additional comments by the authors*

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

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

*Additional information from the authors*

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

**Issues and proceedings before the Committee***Consideration of admissibility*

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

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

11.3 The Committee takes note of the State party's argument that domestic remedies have not been exhausted since preliminary investigations are still pending before the Office of the State Attorney General and the Office of the Attorney General of the Republic. The Committee also takes note of the authors' claims that domestic remedies have not been effective because their processing has been unreasonably prolonged, so that the fate and whereabouts of Mr. Guajardo Rivas remain unknown.

11.4 In view of the fact that more than six years have elapsed since the disappearance of Mr. Guajardo Rivas and the submission of complaints by the authors, without any significant progress being made in those investigations or in the proceedings against those responsible for his disappearance, and without any justification being given by the State party for the delay, the Committee considers that those investigations have been unduly prolonged and that, consequently, article 5 (2) (b) of the Optional Protocol does not preclude it from considering the present complaint.<sup>34</sup>

<sup>34</sup> *Padilla García v. Mexico* (CCPR/C/126/D/2750/2016), para. 8.4.

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

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

*Consideration of the merits*

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

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

12.3 The Committee observes that one of the characteristic elements of enforced disappearance of persons is precisely the refusal to acknowledge detention and to reveal the fate and whereabouts of the person,<sup>35</sup> and recalls its jurisprudence to the effect that the burden of proof cannot fall exclusively on the authors of the communication, since the author and the State party do not always have equal access to the evidence and the State party is often the only one with access to the relevant information.<sup>36</sup> Therefore, when the authors have submitted credible complaints to the State party and when further clarification depends on information that is solely in the hands of the State party, the Committee may consider the complaints substantiated if the State party does not produce satisfactory evidence or explanations to refute them.<sup>37</sup> Moreover, the Committee notes that States must establish effective procedures for the thorough investigation of cases of enforced disappearance,<sup>38</sup> taking into account the characteristic elements of this type of offence, such as the refusal of the authorities to acknowledge detention.

12.4 Against the prevailing background of human rights violations – particularly the practice of enforced disappearance – taking place at the time and place of the events (see para. 2.9 and footnote 6 above), and in light of the consistent account of the events and the documentation submitted by the authors, the Committee considers that the State party has not provided an adequate and concrete explanation to refute the authors' allegations concerning the alleged enforced disappearance of Mr. Guajardo Rivas. Accordingly, the Committee considers that the acts described constitute enforced disappearance.<sup>39</sup>

12.5 The Committee recalls that, while the Covenant does not explicitly use the term "enforced disappearance", such disappearance constitutes a unique and integrated series of acts that represent a continuing violation of various rights recognized in the Covenant,<sup>40</sup> such as the right to life, the right not to be subjected to torture or to cruel, inhuman or

<sup>35</sup> General comment No. 36 (2018) on the right to life, para. 58.

<sup>36</sup> *Padilla García v. Mexico*; *Kandel v. Nepal* (CCPR/C/126/D/2560/2015); *Bolakhe v. Nepal* (CCPR/C/123/D/2658/2015); *Millis v. Algeria* (CCPR/C/122/D/2398/2014); *Sarita Devi Sharma, Bijaya Sharma Paudel and Basanta Sharma Paudel v. Nepal* (CCPR/C/122/D/2364/2014).

<sup>37</sup> *Padilla García v. Mexico*, para. 9.3.

<sup>38</sup> *Herrera Rubio v. Colombia* (CCPR/C/31/D/161/1983), para. 10.3.

<sup>39</sup> Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, ratified by the State party on 18 March 2008.

<sup>40</sup> *Padilla García v. Mexico*, para. 9.5.

degrading treatment or punishment, the right to liberty and security of person, and the right to recognition as a person before the law.<sup>41</sup>

12.6 In the present case, the Committee takes note of the authors' claim that the acts constitute a violation of Mr. Guajardo Rivas' rights under article 6 (1) of the Covenant, given the circumstances of his detention by GATE officers and the absence of news on his fate or whereabouts. The Committee recalls that, in cases of enforced disappearance, deprivation of liberty followed by a refusal to acknowledge the deprivation of liberty, or by concealment of the fate of the disappeared person, removes the person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.<sup>42</sup> In the present case, the State party has not submitted any information indicating that it took any measure to preserve the life of Mr. Guajardo Rivas when he was detained by the State authorities, in violation of article 6 (1) of the Covenant.

12.7 The Committee also takes note of the authors' claim that the acts constitute treatment contrary to article 7 of the Covenant in respect of Mr. Guajardo Rivas, because of the severe suffering, the uncertainty and the effect on his physical and psychological integrity caused by the enforced disappearance. The Committee also notes that, as can be inferred from the facts, the author may well have been subjected during his detention to physical violence constituting torture or cruel, inhuman or degrading treatment or punishment. In the absence of any information from the State party on this point, the Committee considers that the facts as described constitute a violation of article 7 of the Covenant in respect of Mr. Guajardo Rivas. The Committee also notes the authors' assertion that the disappearance of their family member and the pursuit of justice have caused them distress and suffering. In this regard, the Committee considers that the facts described reveal a violation of article 7 of the Covenant in respect of the authors.<sup>43</sup>

12.8 With regard to the alleged violation of article 9 of the Covenant, the Committee takes note of the authors' allegations that Mr. Guajardo Rivas was arrested without a warrant and was not brought before a judicial authority, which would have enabled him to challenge the lawfulness of his deprivation of liberty. The Committee recalls its general comment No. 35, in which it states that enforced disappearance constitutes a particularly aggravated form of arbitrary detention;<sup>44</sup> it recalls that article 17 of the International Convention for the Protection of All Persons from Enforced Disappearance provides that no one shall be held in secret detention and calls for the establishment of registers of persons deprived of their liberty as a fundamental safeguard against enforced disappearance; and it notes that the Inter-American Court of Human Rights has found that clandestine detention centres are per se a violation of the rights to personal liberty.<sup>45</sup> Since the State party has not provided any information in this regard, the Committee considers that due weight should be given to the authors' allegations and finds that the deprivation of liberty of Mr. Guajardo Rivas was a violation of his rights under article 9 of the Covenant.

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

12.10 As for the authors' claim that Mr. Guajardo Rivas was removed from the protection of the law and was last seen in the hands of the authorities, in violation of article 16 of the

<sup>41</sup> *Sarma v. Sri Lanka* (CCPR/C/78/D/950/2000), para. 9.3, and general comment No. 36, para. 58.

<sup>42</sup> *Padilla García v. Mexico*, para. 9.6, and general comment No. 36, para. 58. See also Inter-American Court of Human Rights, *Velásquez-Rodríguez v. Honduras*, merits, Judgment of 29 July 1988, Series C No. 4: "The practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life" (para. 157). "The context in which the disappearance of [...] occurred and the lack of knowledge seven years later about his fate create a reasonable presumption that he was killed" (para. 188).

<sup>43</sup> *Padilla García v. Mexico*, para. 9.7, and general comment No. 36, para. 58.

<sup>44</sup> General comment No. 35, para. 17, and general comment No. 36, para. 58.

<sup>45</sup> See in this connection the settled jurisprudence of the Inter-American Court of Human Rights since the case of *Anzualdo Castro v. Peru*, Preliminary objections, merits, reparations and costs, Judgment of 22 September 2009, Series C No. 202, para. 63.

Covenant, the Committee recalls that the deliberate removal of a person from the protection of the law constitutes a denial of that person's right to recognition as a person before the law.<sup>46</sup> In the present case, the Committee observes that the State party has not furnished any explanation concerning the fate or whereabouts of Mr. Guajardo Rivas, and that he was in the custody of State agents when last seen. The Committee therefore finds that the enforced disappearance of Mr. Guajardo Rivas removed him from the protection of the law and deprived him of his right to recognition as a person before the law, in violation of article 16 of the Covenant.

12.11 Lastly, the Committee takes note of the authors' claim that the acts also constitute a violation of article 2 (3) of the Covenant, read in conjunction with the articles mentioned above, given the lack of an independent, impartial, prompt, thorough and effective investigation of the enforced disappearance of their family member, as immediately reported. The Committee also notes the State party's assertion that its legal obligation to investigate has been discharged because the appropriate investigations have been conducted, with due diligence, impartially and thoroughly. However, the Committee observes that more than six years after the disappearance of Mr. Guajardo Rivas, the investigations have not enabled him to be located and have not allowed the perpetrators to be fully identified; they have thus been unreasonably prolonged. The Committee also notes that, although three individuals are subject to arrest warrants for the crime of disappearance of persons, one of whom has already been detained, these are the persons originally identified by the authors, the State party not having demonstrated the existence of any lines of investigation regarding other persons involved in the enforced disappearance. In particular, the Committee notes the allegations by the authors, not refuted by the State party, that appropriate measures were not taken in time, which led to the loss of important evidence. For example, the investigation was not appropriately opened as a preliminary investigation on the day the complaint was submitted; no orders were given to search or conduct an expert examination of Mr. Guajardo Rivas' home or the GATE premises where the authors had reported having seen the disappeared person; no order was given to inspect the penknife used to force the entrance door to Mr. Guajardo Rivas' home, and the penknife was then mislaid; facial composites of the officers described by the authors were not requested until a year after the complaint had been submitted; the facial composites, once made, were not compared with photographs and no other measures were taken to identify the persons represented in the composites; and a year elapsed before a list of GATE members was requested. In the light of all the above, the Committee considers that the investigations carried out were ineffective to clarify the circumstances of the disappearance, fate and whereabouts of Mr. Guajardo Rivas and to identify those responsible.<sup>47</sup> The Committee concludes that the facts before it reveal a violation of article 2 (3) of the Covenant, read in conjunction with articles 6 (1), 7, 9 and 16 of the Covenant, in respect of Mr. Guajardo Rivas; and of article 2 (3) of the Covenant, read in conjunction with article 7, in respect of the authors.

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

14. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires that full reparation be made to individuals whose rights have been violated. In this regard, the State party should: (a) carry out a prompt, effective, thorough, independent, impartial and transparent investigation into

<sup>46</sup> *Padilla García v. Mexico*, para. 9.9, and general comment No. 36, para. 58. See also the view of the Inter-American Court of Human Rights: "... disappearance is not only one of the most serious forms of placing the person outside the protection of the law but it also entails to deny that person's existence and to place him or her in a kind of limbo or uncertain legal situation before the society, the State and even the international community" (*Anzualdo Castro v. Peru*, para. 90).

<sup>47</sup> General comment No. 36, para. 27, which also states that investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death.

the circumstances of Mr. Guajardo Rivas' disappearance; (b) immediately release Mr. Guajardo Rivas, if he is still being held incommunicado; (c) if Mr. Guajardo Rivas has died, hand over his remains to his family under decent conditions; (d) investigate and, where appropriate, punish any type of action that might have hindered the effectiveness of the processes of searching for and locating Mr. Guajardo Rivas; (e) provide the authors with detailed information on the outcome of the investigation; (f) prosecute and punish those found responsible for the violations committed and make the results of such measures public; and (g) grant the authors, as well as Mr. Guajardo Rivas if he is still alive, full reparation, including adequate compensation for the violations suffered. The State party is also under an obligation to take steps to prevent the occurrence of similar violations in the future, including by establishing a register of all detained persons.

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

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