



# International Convention for the Protection of All Persons from Enforced Disappearance

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## Committee on Enforced Disappearances

### Views adopted by the Committee under article 31 of the Convention, concerning communication No. 5/2021\*, \*\*, \*\*\*, \*\*\*\*

<i>Communication submitted by:</i>	Rosa Ramírez Barrios and Pedro Ramírez Barrios (represented by Maurilio Santiago Reyes, Centro de Derechos Humanos y Asesoría a Pueblos Indígenas)
<i>Alleged victims:</i>	Alexis Marín Ramírez, Rosa Ramírez Barrios and Pedro Ramírez Barrios
<i>State Party:</i>	Mexico
<i>Date of communication:</i>	12 October 2021 (initial submission)
<i>Document references:</i>	Decision adopted by the working group on individual communications and urgent actions under article 31 of the Convention, transmitted to the State Party on 25 October 2021 (not issued in document form)
<i>Date of adoption of Views:</i>	1 April 2025
<i>Subject matter:</i>	Enforced disappearance by a group of unidentified armed individuals
<i>Procedural issues:</i>	Jurisdiction <i>ratione materiae</i> , jurisdiction <i>ratione temporis</i> , exhaustion of domestic remedies
<i>Substantive issues:</i>	Enforced disappearance, lack of investigation and reparation
<i>Articles of the Convention:</i>	1, 2, 3, 12, 15 and 24

1.1 The authors of the communication are Rosa Ramírez Barrios and Pedro Ramírez Barrios, Mexican nationals born in 1972 and 1978, respectively. They are acting on behalf of Alexis Marín Ramírez, the son of Rosa Ramírez Barrios and a Mexican national born on 16 August 1997. The authors claim that the State Party has violated their rights under article 24 of the Convention and the rights of Mr. Marín Ramírez under articles 1, 2, 3, 12, 15 and 24 of the Convention. The authors are represented by counsel.

\* Adopted by the Committee at its twenty-eighth session (17 March–4 April 2025).

\*\* The following members of the Committee participated in the consideration of the communication: Juan Pablo Albán-Alencastro, Matar Diop, Olivier de Frouville, Fidelis Kanyongolo, Milica Kolaković-Bojović, Barbara Lochbihler, Horacio Ravenna and Carmen Rosa Villa Quintana.

\*\*\* The texts of the separate opinions of Committee members Olivier de Frouville (concurring) and Juan Pablo Albán Alencastro (concurring) are appended to the present Views.

\*\*\*\* The annexes are being circulated in the language of submission only.



1.2 The Convention entered into force for the State Party on 23 December 2010, and the State Party recognized the competence of the Committee to consider individual communications on 2 October 2020.

1.3 On 17 March 2025, the Committee, in accordance with rule 78 of its rules of procedure, invited the parties to an in-person hearing with the aim of receiving additional information on the facts that are the subject of the present communication.

### **Facts as submitted by the authors**

2.1 Mr. Marín Ramírez is from Cabatiahua Hidalgo in the municipality of Santa Cruz Itundujia, which is located in the district of Putla de Guerrero in the Mixteca region of the State of Oaxaca. He had a job transporting timber in his torton-style truck to different parts of the States of Oaxaca and Puebla.

2.2 On 7 November 2017, he set off with J.G.J. to take timber to Atlixco, in the State of Puebla, having informed his mother that he would first go to collect timber from a sawmill belonging to some people known in the community as the “Güeros”. At midnight on 8 November, J.G.J. reportedly notified the family of Mr. Marín Ramírez that the pair had been detained in a white Nissan double-cabin pickup truck by six men wearing dark clothing whose faces were covered with ski masks and who were carrying weapons resembling shotguns and wearing “police-type” boots with their trousers tucked into them. These individuals reportedly intercepted the torton-style truck that Mr. Marín Ramírez was driving to Tlaxiaco, in the State of Oaxaca. Mr. Marín Ramírez and J.G.J. were allegedly forced to get out of the truck and were put into the Nissan pickup truck, which continued on its way. Subsequently, two kilometres away, J.G.J. was allegedly taken out of the pickup truck again and led into the brush by two of the hooded men, who told him that he should stay there and wait a few minutes until he could no longer hear the noise of the pickup truck’s engine and then return to the torton-style truck to spend the night, and that, the next day, he should inform the victim’s family that they would receive a telephone call with instructions on how to pay the ransom. J.G.J. stated that the assailants told him that they were not thieves, that, when the family received the call, no mention should be made of kidnapping, and that, when the money was handed over, reference should be made to payment in kilos.

2.3 Between 9 November and 4 December 2017, a negotiation between Mr. Marín Ramírez’s family and the individuals who had taken him allegedly took place via the WhatsApp messaging service, in the form of numerous telephone calls, text messages, voice messages and videos from three different telephone numbers. On 9 November 2017, Mr. Marín Ramírez’s brother reportedly received a call from the individuals demanding a ransom of 10 million pesos (approximately US\$ 572,000). On 4 December, Mr. Marín Ramírez’s family reportedly received a call from the individuals and offered them the sum of 147,300 pesos (approximately US\$ 8,500), which the individuals rejected, stating that they required 3 million pesos (approximately US\$ 172,000) to release him. No agreement was reached, and the family did not receive any further news.

2.4 On 11 November 2017, the author approached the office of the Public Prosecution Service in the city of Tlaxiaco, specifically the special anti-kidnapping unit of the Office of the State Prosecutor General, to report the disappearance of her son, which led to the opening of an investigation file.<sup>1</sup>

2.5 On 31 October 2018, the author reported her son’s disappearance to the public prosecutor assigned to the Missing Persons Search Unit of the Office of the Prosecutor General of the State of Oaxaca. In 2019, an investigation file (“background note”) was opened to facilitate cooperation in search actions while the investigation by the special anti-kidnapping unit was ongoing.

### **Complaint**

3.1 The authors claim that the State Party has violated their rights under articles 1, 2, 3, 12, 15 and 24 of the Convention, since the authorities responsible for searching for Mr. Marín

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<sup>1</sup> No. 1031/FEDAI/2017.

Ramírez and investigating his disappearance have not acted with the necessary due diligence and that the investigation has still not uncovered any evidence that might help to determine who committed or participated in his disappearance, let alone establish his whereabouts. The authors maintain that the incident was reported in a timely manner and that, even though it was initially a kidnapping, when the ransom calls stopped and they received no further news from Mr. Marín Martínez, the authors considered him to be a disappeared person, which prompted them to also file a complaint for disappearance.

3.2 In relation to the second complaint dated 31 October 2018, the authors add that it was allegedly not processed until one year later, demonstrating that the authority responsible has refused to take the steps and allocate the resources necessary to carry out an effective investigation, resulting in evidence being lost owing to the passage of time.

3.3 Regarding article 24 of the Convention, the authors claim that they live in a state of anxiety, not knowing whether their relative is alive or dead and not knowing the truth about the circumstances of his disappearance, the progress and results of the investigation or his fate and/or whereabouts. They point out that no measures have been taken to search for and locate him and that, since they do not know his whereabouts, it has been impossible to take steps to have his remains returned to them. The authors also claim that the State Party has not granted them any form of reparation, let alone taken measures to ensure that, as indirect victims, they benefit from protection and social and financial support.

3.4 Lastly, the authors claim that the exception to the rule concerning the exhaustion of domestic remedies established in article 31 (2) (d) of the Convention applies in their case. They argue that they made use of available domestic remedies that, in principle, should have been effective, namely criminal investigation proceedings, including the filing of a second complaint with the Office of the Prosecutor General of the State of Oaxaca. However, almost four years after the disappearance of Mr. Marín Ramírez and his mother's having filed the first complaint in that connection, none of the persons responsible have been identified or committed for trial; neither the special anti-kidnapping unit nor the Missing Persons Search Unit of the Office of the Prosecutor General of the State of Oaxaca has given an account of what happened; the whereabouts and fate of Mr. Marín Ramírez remain unknown; and his family has not received any form of reparation. Therefore, the domestic remedies in question have not produced any results and have proven to be ineffective, and their application has been unreasonably prolonged.

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

4.1 In its observations on admissibility and the merits of the communication, submitted on 7 March 2022, the State Party requested the Committee to declare the communication inadmissible for failure to exhaust domestic remedies, in accordance with article 31 (2) (d) of the Convention, and because the authors wish for the Committee to act as a court of fourth instance.

4.2 Regarding the alleged failure to exhaust domestic remedies, the State Party maintains that the present case is still pending resolution by the domestic investigating authorities, who are still gathering evidence to identify the perpetrators of the disappearance of Mr. Marín Ramírez. It points out that the special anti-kidnapping unit of the Office of the Special Prosecutor for High-Impact Crimes has opened an investigation file. Regarding the nature of the crime committed, the prosecutor's office considered that the victim had been kidnapped, qualifying the act as "aggravated kidnapping" under article 9 (i) (a), read in conjunction with article 10 (i) (a) and (c), of the Act for the Prevention and Punishment of Kidnapping Offences.

4.3 The State Party points out that, after the complaint was received, the prosecutor's office assisted the family on an ongoing basis through a police team specialized in crisis management and negotiation and undertook investigative actions to find the place where Mr. Marín Ramírez was possibly being held captive. The State Party submits that, although no protection measures were granted, the indirect victims had the telephone numbers of the police officers in question, whom they could contact in case of need, and that the prosecutor's office kept the family informed of the status of the investigations at all times.

4.4 The State Party emphasizes that various investigative actions were undertaken, such as interviewing the complainants, preparing various reports on the status of the investigations and expert reports, authorizing the interception of communications, compiling intelligence findings and preparing the forensic genetics report dated 24 May 2018, the investigation reports related to efforts to search for and locate the victim in 2019 and 2020, and the forensic genetics cross-referencing report dated 8 July 2021. The State Party adds that, despite the different investigative and analytical actions taken, it has not yet been possible to establish the whereabouts of Mr. Marín Ramírez. However, it maintains that this is not an obstacle to continuing coordinated efforts to achieve results in this regard.

4.5 The State Party submits that, in 2018, the special unit on enforced disappearance started to compile the “background note” on the disappearance of Mr. Marín Ramírez<sup>2</sup> and that the commission for the search for disappeared persons of the State of Oaxaca was asked to put together a search plan and to provide the victims with regular updates on the progress achieved. As a result, the following investigative actions were undertaken: (a) completion of the ante-mortem and post-mortem questionnaire; (b) creation of the genetic profile of the family of Mr. Marín Ramírez for the purpose of cross-referencing possible evidence; (c) collection of eyewitness statements; (d) conduct of visual inspection of the scene of the crime; (e) analysis of telephone calls; and (f) publication of a leaflet appealing for help to search for and locate Mr. Marín Ramírez.

4.6 The State Party submits that it has not violated articles 1, 2, 3, 12, 15 and 24 of the Convention, as it has taken immediate action throughout, ensuring respect for the rights of the victims and following specific guidelines, and that it continues to undertake investigative actions to establish the whereabouts of Mr. Marín Ramírez and to identify and apprehend the persons presumed to be responsible for the crime of kidnapping. The State Party therefore reiterates its position that domestic remedies related to the investigation file in question have not been exhausted. It adds that the victims have not been prevented from or hindered in exercising their right to appeal to local and national government bodies, human rights defenders or judicial bodies, such as the Constitutional Chamber for the Protection of Human Rights of the High Court of Justice of the State of Oaxaca.

4.7 The State Party also asserts that there was no unjustified delay, since, despite the complex social and security situation prevailing in various communities in the district of Tlaxiaco, the authorities responded immediately and undertook investigative actions to locate the place of captivity, rescue the victim and apprehend the offenders. The State Party alleges that this situation makes it difficult to conduct investigative activities, that entering these communities entails a risk, as armed groups prevent prosecutorial authorities from carrying out their work, that, if they wish to enter, they must first request permission from the municipal authorities, and that investigation activities are therefore subject to such authorization, as entering these communities without permission would render the state government directly responsible for the ensuing consequences.

4.8 Lastly, the State Party alleges that the global pandemic triggered by coronavirus disease 2019 (COVID-19) caused different government institutions to restrict or even suspend their activities and that, despite this, the authorities had continued to undertake investigative actions in 2020 and in 2021.

#### **Authors’ comments on the State Party’s observations on admissibility and the merits**

5.1 In their comments on the State Party’s observations on admissibility and the merits, submitted on 9 June 2022, the authors argue that the prosecutor’s office has delayed and hindered the investigations into the facts and that this delay is not the fault of the family of Mr. Marín Ramírez. They claim that the prosecutor’s office failed to take all the steps necessary to gather evidence before it was lost or destroyed over time. The authors allege that the investigative actions undertaken were not effective in locating Mr. Marín Ramírez, and that essential steps were not taken, such as obtaining a statement from J.G.J., who was with the victim at the time of his disappearance, which was not done until 25 September 2020, two years and five months later. Moreover, the scene of the crime and the chain of custody

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<sup>2</sup> Background note No. 03/CC-UEDF/2018.

were not preserved, and the visual inspection of the scene was not carried out until several months later, even though such procedures could well be decisive for the investigation.

5.2 Regarding the background note, the authors argue that it was compiled at the request of the victim's mother, who, given the lack of results yielded by the special anti-kidnapping unit of the Office of the Special Prosecutor for High-Impact Crimes, approached the special unit on enforced disappearance to file a complaint on 31 October 2018. However, they allege that no search actions have been carried out and that other steps requested by the family have not been taken, and that their access to the investigation files has been restricted. The authors allege that the State Party failed to take immediate action and that, to date, they have no knowledge of the various lines of inquiry being pursued or the results yielded. Regarding the State Party's argument that conducting investigative activities entails a risk because its authorities must enter areas where armed groups allegedly operate, the authors reiterate that the State has all the means and prerogatives necessary to enforce the rule of law in the national territory.

5.3 The authors request the Committee to urge the State Party to:

- (a) Grant them the status of victims at the national level so that they can participate effectively in the investigations related to the disappearance of their family member;
- (b) Ensure that a thorough and impartial investigation takes place;
- (c) Prosecute, try and punish the perpetrators and those responsible for the enforced disappearance of Mr. Marín Ramírez;
- (d) Provide them with reparation and prompt, fair and adequate compensation, in accordance with article 24 (4) and (5) of the Convention;
- (e) Adopt all measures necessary to give effect to the guarantees of non-repetition established in article 24 (5) (d) of the Convention;
- (f) Publish the present Views and disseminate them widely, particularly but not exclusively among officials in state prosecutor's offices and the Prosecutor General's Office who investigate acts of enforced disappearance.

#### **State Party's additional observations**

6.1 On 20 February 2024, the State Party argued that the country is home to slightly more than 25 million people who self-identify as Indigenous and that the Constitution recognizes the multicultural composition of the nation, as well as the right to self-determination of Indigenous Peoples and communities.<sup>3</sup> It adds that, in the State of Oaxaca, 65.7 per cent of the population self-identifies as Indigenous, and there are at least 16 Indigenous Peoples spread across eight regions, each with its own traditions, culture, identity and worldview. Of the state's 570 municipalities, 417 are governed by the customs and traditions system and 15 by the political party system. The district of Tlaxiaco, in the Mixteca region, has an internal regulatory system that is aligned with its own worldview. In this area, several inter-community conflicts have taken place over land boundaries, the management of forests and timber, and the inequitable distribution and misuse of federal funding, which led to the creation of several social movements, such as the Movimiento de Unificación de Lucha Triqui, the Movimiento de Unificación de Lucha Triqui Independiente and the Unión de Bienestar Social de la Región Triqui. The State Party adds that the social movements in the area defend diverse and opposing social interests, which has given rise to a struggle among them and has led to the commission of multiple crimes.

6.2 The State Party explains that the inability of these movements to reach an agreement among themselves has prevented the Oaxaca government authorities, particularly the staff of the state prosecutor's office, from entering these communities. In addition, the community has its own internal regulatory system and claims that, for this reason, state officials should not enter the community unless they have obtained prior authorization. Otherwise, the State of Oaxaca would be liable for any adverse consequences suffered by the officials in question.

<sup>3</sup> Constitution, art. 2.

6.3 Regarding the due diligence of the authorities in the investigation and the search for Mr. Marín Ramírez, the State Party alleges that the community of Palo de Letra, where the kidnapping allegedly occurred, falls within the bounds of the district capital of Tlaxiaco. This community is located next to the communities of San Miguel El Grande, Llano de Guadalupe and others, where members of the Movimiento de Unificación de Lucha Triqui and the Movimiento de Unificación de Lucha Triqui Independiente are present and do not allow state officials to enter. It adds that heavily armed persons are present in the community.<sup>4</sup> This situation is compounded by the ongoing conflict over land boundary disputes between the district of Tlaxiaco and its municipality of Magdalena Peñasco, which underscores the high degree of risk to which investigators are exposed when they enter the area where Mr. Marín Ramírez was allegedly kidnapped. It adds that, on 30 January 2024, a meeting took place between the indirect victims and representatives of various institutions, including the commission for the search for disappeared persons of the State of Oaxaca, to examine the advantages and disadvantages of entering the area and that, on this occasion, it was determined that a search plan would be drawn up. It adds that a survivor of another kidnapping had stated in his testimony that, during his time in captivity, his kidnappers had told him that there were many holes and caves in Tlaxiaco and that if they killed him, he “would not be found”. The authorities are currently undertaking search actions at three possible concealment sites in the area in order to locate or establish the whereabouts of Mr. Marín Ramírez. The State Party reiterates that, despite the obstacles described above, the authorities have acted diligently by undertaking investigation and search actions within reasonable time frames.

#### **Author’s additional comments on the State Party’s observations**

7. In their additional comments of 23 February 2024, the authors contend that the State Party cannot use the reportedly complex social and security situation in various communities in Tlaxiaco to justify its failure to take urgent and necessary steps, such as conducting a visual inspection and interviewing the only eyewitness, and its failure to establish lines of inquiry and to draw up a search plan. They add that, although a search was conducted on 16 June 2022, it was carried out four years and five months after the complaint had been filed and that, to date, several investigative actions still remain pending. The authors add that, although a climate of insecurity prevails in the communities in question and it is necessary to request permission from the municipal authorities in order to enter, this does not constitute an obstacle for the State Party, since it has the means, the inter-institutional links and the coercive force to enforce its decisions. Likewise, the necessary investigative actions can be undertaken with a military and/or police escort, as has been done in other cases.

#### **Hearing**

8.1 At the invitation of the Committee, and pursuant to rule 78 of its rules of procedure, the author of the communication, their legal representatives and representatives of the State Party appeared before the Committee on 17 March 2025. The aim of this hearing was for the Committee to receive additional information on the facts. The parties were requested to address the following specific points:

(a) The presence of armed groups in the region of Tlaxiaco, State of Oaxaca, in particular from 2017 to the present day; the name and composition of these groups and the territories in which they are present; records of violations perpetrated by these groups and, if applicable, the nature and scope of the violations; whether these groups exercise any type of control over the territories in question and, if so, the nature of such control; the actions undertaken by the State Party to prevent and punish violations committed by these groups; and whether there are confrontations between these groups and other groups or local authorities present in the territory and, if applicable, an indication of the nature and intensity of such confrontations;

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<sup>4</sup> See <https://animalpolitico.com/estados/emboscada-san-miguel-grande-oaxaca-muertos-policias>.

(b) Access by state authorities (police and prosecutors) to the territory where Mr. Marín Ramírez allegedly disappeared; and, if applicable, the requirements and procedures for gaining authorization and their scope;

(c) Access by federal authorities to the territory where Mr. Marín Ramírez allegedly disappeared;

(d) Information on the implementation of legislation on the autonomy and self-determination of Indigenous Peoples, in particular regarding the delegation of powers to Indigenous and municipal authorities.

*Arguments presented by the authors*

8.2 With regard to the first point, the authors allege that the Mixteca region of Oaxaca has been affected by the presence of armed groups and criminal gangs operating with the protection and acquiescence of police and prosecutorial bodies, which has facilitated continued impunity. The authors reiterate that the State Party has not taken all necessary and appropriate measures to conduct a prompt and effective investigation into the disappearance of Mr. Marín Ramírez. The authors add that, despite their repeated requests, no further action has been taken since 4 August 2023, that no search plan has been drawn up and that no progress has been made in the investigation. According to the authors, the State Party's claims that the presence of armed groups in the area is an obstacle to making progress in the investigation cannot justify the lack of investigation, since the real reason for the lack of progress is the corruption of the security forces and authorities of the prosecutor's office and their collusion with criminal groups. The authors refer to a number of cases involving disappearances and serious crimes in the region that remain unresolved, which, according to the authors, is evidence of a deliberate lack of preventive and investigative action by local and state authorities.

8.3 Regarding the second and third points, the authors state that it is the responsibility of the Public Prosecution Service to coordinate with the state commission for the search for disappeared persons and the Ministry of the Interior of the State of Oaxaca to ensure access to the places where searches are to be carried out. However, despite a land survey having been carried out in Palo de Letra in May 2023, to date, no effective steps have been taken to draw up a search plan and no specific steps have been taken to coordinate with the state commission for the search for disappeared persons. The authors claim that there is no real impediment to conducting field investigations in the area where the disappearance occurred. They state that the involvement of federal authorities is limited to providing security and that they intervene only if called on to do so, since the state authorities have primary responsibility in this regard.

8.4 Lastly, the authors claim that, although there is legal pluralism in the State Party that recognizes Indigenous jurisdiction, this jurisdiction is not absolute. The Supreme Court and article 420 of the National Code of Criminal Procedure establish that Indigenous authorities may apply their regulations in the case of internal conflicts, but not in the case of serious crimes such as enforced disappearance, which require formal pretrial detention. Enforced disappearance, in addition to being a crime, is considered a serious human rights violation, meaning that all authorities, including Indigenous and municipal authorities, are under an obligation to investigate and punish it in a diligent and impartial manner. Indigenous autonomy in matters of justice is consistent with the national legal framework and human rights principles and does not restrict the activities of state or federal authorities. The authors recall that the regulations of Indigenous Peoples must be aligned with the national legal order and the Constitution.

*Arguments presented by the State Party*

8.5 The State Party is committed to cooperating with the Committee, as borne out by its participation in the hearing. It also states that the search for disappeared persons and the investigation of cases of enforced disappearance is a national priority and that a specific legal framework is in place for this purpose, including institutions, coordination mechanisms and a National Search Commission.

8.6 Regarding the first point, the State Party recognizes that, while there are social disputes over land boundaries involving various Indigenous groups and social movements, which gives rise to a complex situation, the territory is not under the control of armed groups. According to the State Party, a comprehensive contextual analysis is in order, since different cultures, structures and regulatory models converge in these Indigenous communities, with the result that carrying out certain activities without adequate coordination may jeopardize coexistence or cause conflicts within the communities. It adds that, while it is not necessary to request permission to enter the territory to investigate, it is necessary to conclude prior agreements with the Indigenous communities to ensure that their autonomy and self-determination are respected. To this end, it is important to maintain an ongoing dialogue with these Indigenous communities, which, in specific situations, such as the COVID-19 pandemic, have restricted outsiders' access to their territory.

8.7 With regard to coordination between state and municipal authorities, the State Party reports that police authorities are appointed by the government of the State of Oaxaca and that federal authorities are also present. Regarding preventive measures, the State Party explained that there are peace delegates who, in cases of disappearance, are in direct contact with the municipal authorities and with the state commission for the search for disappeared persons, and that the police presence in the Mixteca region has been strengthened.

8.8 With regard to legislation on Indigenous matters, the State Party explained that the Constitution of the State of Oaxaca establishes the duty to safeguard Indigenous Peoples and communities and to recognize their regulatory systems. To this end, the state authorities conclude agreements with the communities and maintain a dialogue with the municipal authorities during the undertaking of investigative actions.

8.9 The State Party maintains that, in their initial communication, the authors did not advance claims of tolerance or acquiescence by State authorities in order to establish that the disappearance of Mr. Marín Ramírez constituted an act of enforced disappearance. Currently, the investigation file refers to the crime of kidnapping, which is being investigated by local authorities under the aegis of the special anti-kidnapping unit of the Office of the Special Prosecutor for High-Impact Crimes. In addition, the State Party reiterates that, to support search actions, the Missing Persons Search Unit started to compile a "background note" to facilitate cooperation with specialized personnel and to make use of the search mechanisms of the prosecutor's office in question. The State Party recognizes its obligation to conduct thorough investigations to locate Mr. Marín Ramírez alive or to identify his remains and notes that it requires a reasonable amount of time to do so. It argues that it has undertaken actions to this end, despite the complications arising from the practices and customs system and the restrictions imposed during the pandemic and Storm Agatha, which have slowed down the process, and that this does not amount to inaction on the part of the State.

8.10 The State Party reiterates that the present communication is inadmissible for failure to exhaust domestic remedies, since, at present, various investigative actions remain pending.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

9.1 Before considering any complaint contained in a communication, the Committee must decide whether the communication is admissible under article 31 (1) and (2) of the Convention.

9.2 The Committee notes that the events which form the basis of the authors' allegations before the Committee began in November 2017, namely after the entry into force of the Convention for the State Party on 23 December 2010, and that article 35 (1) of the Convention is therefore not an obstacle to the Committee's competence, since the State Party's obligations under the Convention already existed when the alleged disappearance of Mr. Marín Ramírez began. Furthermore, while the State Party recognized the competence of the Committee to consider individual communications under article 31 of the Convention on



2 October 2020, the Committee recalls the continuous nature of enforced disappearance<sup>5</sup> and the fact that the alleged enforced disappearance of Mr. Marín Ramírez continues after the recognition of this competence to the present day. In view of the above, the Committee concludes that it is competent *ratione temporis* to consider the present communication.<sup>6</sup>

9.3 The Committee notes the information provided by the authors, which has not been disputed by the State Party, to the effect that Mr. Marín Ramírez was reportedly disappeared by a group of armed individuals in an area where several armed groups were known by the state authorities to be operating. Similarly, the Committee notes the authors' allegations that the authorities responsible for the search and investigation failed to take prompt and effective measures to locate Mr. Marín Ramírez and to identify those responsible for his disappearance. In the light of the foregoing, the Committee considers that the facts before it fall within its scope of competence, and concludes that the present communication is compatible *ratione materiae* with the provisions of the Convention and declares it admissible under article 31 (1).<sup>7</sup>

9.4 The Committee notes the State Party's argument that the communication should be declared inadmissible for failure to exhaust available remedies under article 31 (2) (d) of the Convention, since the investigation files opened by the Office of the Prosecutor General of the State of Oaxaca are still active, as evidenced by the various actions that are still being undertaken and are pending completion.

9.5 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 Convention.<sup>8</sup> The Committee recalls that, by virtue of article 31 (2) (d) of the Convention, this rule will not apply if the application of domestic remedies is unreasonably prolonged.<sup>9</sup> The Committee also recalls that, according to the rule, the domestic remedies in question must be effective and available.<sup>10</sup> When faced with duly substantiated allegations of exhaustion of domestic remedies, or of applicable exceptions to the rule, it is for the State Party to indicate which domestic remedies available to the authors are effective and do not exceed reasonable time limits.<sup>11</sup>

9.6 In the present case, the Committee notes that since the disappearance of Mr. Marín Ramírez and the filing of the corresponding complaints at the national level, and despite numerous requests from the authors, the ongoing investigations have not produced any results and the State Party has not justified the delay beyond stating in general terms that the investigations have not yet been completed, given the complexity of the case, and making reference to the difficulties in gaining access to the community in question and the delays attributable to the COVID-19 pandemic and Hurricane Agatha. Consequently, the Committee considers that this remedy has been unreasonably prolonged and concludes that the present case meets the requirements of article 31 (2) of the Convention.

9.7 The Committee notes that, although the authors invoke article 15 of the Convention, they have not provided any explanation as to how this article has been violated, and therefore considers that the authors have failed to substantiate their allegations for the purposes of admissibility and declares them inadmissible.<sup>12</sup>

9.8 The Committee considers that the authors' other allegations, relating to the alleged disappearance of Mr. Marín Ramírez, the lack of a prompt and thorough search and

<sup>5</sup> See article 8 (1) (b) of the Convention. See also [A/HRC/16/48](#), para. 39; and Inter-American Court of Human Rights, *Radilla Pacheco v. Mexico*, judgment of 23 November 2009, paras. 15–24 and 138–146.

<sup>6</sup> *Berrospe Medina v. Mexico* (CED/C/24/D/4/2021), para. 6.2.

<sup>7</sup> See, *a contrario sensu*, *Carrión Barcaiztegui v. Spain* (CCPR/C/80/D/1019/2001) para. 6.4; and *Calvet Ràfols v. Spain* (CCPR/C/84/D/1333/2004), para. 6.4.

<sup>8</sup> *E.L.A. v. France* (CED/C/19/D/3/2019), para. 6.6; and Human Rights Committee, *Hidalgo Rea v. Mexico* (CCPR/C/131/D/3259/2018), para. 8.4.

<sup>9</sup> *Yrusta and Yrusta v. Argentina* (CED/C/10/D/1/2013), para. 8.5. See also the Committee's rules of procedure, rule 65 (3) (e).

<sup>10</sup> *Yrusta and Yrusta v. Argentina*, paras. 8.5–8.7; and *E.L.A. v. France*, para. 6.5.

<sup>11</sup> *Yrusta and Yrusta v. Argentina*, paras. 8.5–8.7; and *E.L.A. v. France*, para. 6.5.

<sup>12</sup> *Berrospe Medina v. Mexico*, para. 6.6.

investigation, and the lack of access to the truth about the circumstances of his disappearance and to reparation for the victims, have been duly substantiated for the purposes of admissibility. Accordingly, in the absence of any other obstacles to the admissibility of the communication, the Committee declares it admissible insofar as it raises issues under articles 1, 2, 3, 12 and 24 of the Convention, in respect of Mr. Marín Ramírez, and under articles 12 and 24 of the Convention, in respect of the authors, and proceeds to consider it on the merits.

#### *Consideration of the merits*

10.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, including the information provided during the hearing.

10.2 The Committee notes the information provided by the authors to the effect that Mr. Marín Ramírez was intercepted and deprived of his liberty by six individuals wearing dark clothing and tall boots with their trousers tucked into them and whose faces were covered with ski masks and who were carrying weapons resembling shotguns. The Committee also notes that the persons who abducted Mr. Marín Ramírez reportedly told his companion that the family would receive a telephone call with instructions on how to pay the ransom. The Committee further notes that, between 9 November and 4 December 2017, negotiations reportedly took place between the individuals and the family, and that, on 4 December, his family reportedly lost contact with these individuals, who had rejected the offer made by them. The Committee notes the information provided by the State Party, according to which the Palo de Letra community, where Mr. Marín Ramírez was allegedly disappeared, is an area characterized by social conflict and land disputes between neighbouring communities. It also notes the presence of “heavily armed persons” in the area.

10.3 The Committee further notes that, according to the information provided by the authors, the state authorities are aware that armed groups are operating in the area where the events occurred, and that no measures have been taken to prevent or investigate the commission of serious crimes, including the disappearance of Mr. Marín Ramírez. Against this backdrop, the Committee must establish whether the disappearance of Mr. Marín Ramírez, which was allegedly perpetrated by non-State actors, is attributable to the State Party and therefore falls within the scope of article 2 of the Convention, or whether, on the contrary, it falls within the scope of article 3 of the Convention.

10.4 The Committee recalls that article 2 of the Convention deals with acts of enforced disappearance committed by agents of the State or persons or groups of persons acting with the authorization, support or acquiescence of the State.<sup>13</sup> It covers circumstances under which the acts or omissions of persons or groups of persons that are not agents of the State may nevertheless be attributed to the State and thus trigger the State’s responsibility in international law. Such attribution may occur in any context, including situations of international or non-international armed conflict.<sup>14</sup> This includes, inter alia, situations where criminal organizations or armed groups are de facto under the control of State authorities or where such organizations receive some form of support from State agents, or where there is a known pattern of disappearances of persons and the State fails to take the measures necessary to prevent further disappearances and to investigate them and bring the perpetrators to justice.<sup>15</sup>

10.5 The Committee recalls that, according to its statement on non-State agents in the context of the International Convention for the Protection of All Persons from Enforced Disappearance: (a) “authorization” means that the State, through its agents, has either orally or in writing given permission to persons or groups of persons to commit disappearance; (b) “support” means that the State has provided some assistance to persons or groups of persons who have committed enforced disappearance, through, inter alia, the sharing of information and/or the provision of means such as infrastructure, funding, weapons, training

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<sup>13</sup> *Yrusta and Yrusta v. Argentina*, para. 10.3.

<sup>14</sup> CED/C/10, para. 2.

<sup>15</sup> CED/C/MEX/VR/1 (Findings), para. 40.

or logistics. For the purpose of attribution in this context, support does not have to be provided with the specific aim of committing enforced disappearance; and (c) “acquiescence” means that the State knew, had reasons to know or ought to have known of the commission or of the real and imminent risk of commission of enforced disappearance by persons or groups of persons, but that one of the following applies: (i) the State has either accepted, tolerated or given consent to this situation, even implicitly; (ii) the State has deliberately and in full knowledge, by action or omission, failed to take measures to prevent the crime and to investigate and punish the perpetrators; (iii) the State has acted in connivance with the perpetrators or with total disregard for the situation of the potential victims, facilitating the actions of the non-State actors who commit the act; and (iv) the State has created the conditions that allowed their commission.<sup>16</sup>

10.6 The Committee notes that, based on the information provided by the parties, including the information provided orally during the hearing, the disappearance of Mr. Marín Ramírez was allegedly committed by non-State actors, presumably linked to groups of armed individuals operating in the area. The Committee notes the oral statements of the authors, according to which Mr. Marín Ramírez was disappeared by criminal groups that operate under the protection and/or with the acquiescence of police and prosecutorial bodies. However, the Committee notes that these statements are general in nature and were not submitted in advance of the hearing or included in the criminal complaints filed at the national level or in the initial communication submitted to the Committee. Consequently, the Committee considers that, based on the information contained in the case file, there is not sufficient information or concrete evidence to establish a presumption of direct support or authorization by state authorities in the alleged disappearance of Mr. Marín Ramírez. Therefore, the Committee must determine whether there was acquiescence by the State in the disappearance, under the terms described in paragraph 10.4. To that end, the Committee must first determine whether, in the case of the disappearance of Mr. Marín Ramírez, the State knew, had reasons to know or ought to have known of the commission, or of the real and imminent risk of commission, of enforced disappearance by persons or groups of persons. Secondly, the Committee must examine whether the State Party, deliberately and with full knowledge of the facts, failed to take measures to prevent the crime and to investigate and punish those responsible.

10.7 Regarding the first point, the Committee notes that, according to the authors, the disappearance of Mr. Marín Ramírez occurred in the context of serious human rights violations committed by groups of armed individuals operating in the area, which include other disappearances and other serious crimes. The Committee also notes that the State Party recognizes the existence in the area of inter-community conflicts related to land boundaries, logging and the distribution of federal funds, which has given rise to social movements. The State likewise acknowledges the existence of land disputes that have kept the region of Tlaxiaco and the municipality of Magdalena Peñasco in a state of conflict. Based on the foregoing, the Committee concludes that the State Party was aware of the presence of armed individuals in the area and the serious violations committed by them in the region of Tlaxiaco, including disappearances. In the case of Mr. Marín Ramírez, the Committee considers that, given the context described, the State should have known of the real and imminent risk of his being disappeared.

10.8 The Committee notes that the authors have not alleged that the State Party failed to take the necessary measures to prevent Mr. Marín Ramírez’s disappearance. Rather, they argue that the State Party has failed to conduct an effective search for the disappeared person or to adequately investigate his disappearance. In particular, the Committee notes the authors’ claim that cases of disappearances in the area remain unresolved, which demonstrates a deliberate failure to investigate on the part of the local and state authorities. In the specific case of Mr. Marín Ramírez, the authors claim that the prosecutor’s office failed to conduct a prompt and effective investigation and to adopt a search plan. In particular, the Committee notes the authors’ claims, which have not been refuted by the State Party, that the crime scene and the chain of custody were not preserved, key evidence was not collected, and other evidence was collected late, such as the statement of J.G.J., the only eyewitness, which was

<sup>16</sup> CED/C/10, paras. 3–5.

not obtained until more than three years after the alleged disappearance, and the visual inspection of the scene was not conducted until several months later.

10.9 The Committee also notes the State's argument that, despite the complex social and security situation in the region of Tlaxiaco, the authorities took immediate steps to locate Mr. Marín Ramírez and to identify those possibly responsible for his disappearance. The State Party asserts that the presence of armed groups and organized crime poses risks to investigations and that it must coordinate access with Indigenous communities. In addition, it explains that the delays are due to the pandemic and Hurricane Agatha. However, the Committee notes that both parties acknowledge that the first search action was not undertaken until June 2022 and that it was only in January 2024, seven years after the filing of the complaint in 2017, that a meeting was held with the victims and the representatives of various institutions to discuss whether to enter the area.

10.10 The Committee notes that at the time of Mr. Marín Ramírez's disappearance, there was social conflict in the Mixteca region, and that that situation persists, meaning that the state authorities and the Indigenous communities must coordinate actions to carry out certain search and investigation procedures, while maintaining respect for the self-determination of the Indigenous Peoples. In this context, the Committee is not convinced by the State Party's argument that the constitutional recognition of Indigenous regulatory systems and the need for prior agreements with Indigenous communities can justify delays in the investigation, since the duty to protect human rights, including searching for and locating missing persons to determine their whereabouts, rests with the State Party and cannot be delegated or be subject to conditions. The existence of mechanisms such as peace delegates and the presence of state and federal authorities demonstrate that the State Party has the means to ensure access to the area and move forward with the investigation. The Committee also does not consider the COVID-19 pandemic or Hurricane Agatha to be acceptable justifications for the lack of progress seven years and five months after the disappearance.

10.11 The Committee notes the author's arguments concerning the negligence of the authorities in the search for Mr. Marín Ramírez and the lack of results yielded by the investigation to identify those responsible and to establish his whereabouts. It also considers the arguments of the State Party, which claims to have provided continuous support to the family through a specialized police team and to have undertaken investigative actions to locate the disappeared person. However, despite these measures, the State Party acknowledges that it has still not been possible to establish the whereabouts of Mr. Marín Ramírez. The Committee notes that, despite the alleged complexity of the situation, the State Party has not explained the delay in the investigation and search. In particular, most of the substantive actions mentioned by the State date from 2019, in other words, two years after the disappearance. No significant progress has been achieved in subsequent years, which suggests that the case has not been given priority. Furthermore, no new lines of inquiry or effective steps have been identified in order to overcome the obstacles mentioned above. From the list of actions provided by the State Party, it appears that the last search activity took place in August 2023. Making reference to basic actions, such as interviews and inspections, does not negate the State Party's sustained lack of action or relieve it of its obligation to investigate in a diligent and effective manner.

10.12 In the light of the foregoing, and considering the State Party's long-standing knowledge of the context and, in particular, the presence of armed individuals and groups in the area, the Committee concludes that the State Party has deliberately and with full knowledge of the facts failed to take all appropriate measures to search for Mr. Marín Ramírez, investigate his disappearance and punish those responsible. In conclusion, the Committee considers that Mr. Marín Ramírez is a victim of enforced disappearance perpetrated by persons or groups of persons acting with the acquiescence of the State Party, in violation of article 1, read in conjunction with article 2, of the Convention.

10.13 The Committee recalls that, according to article 12 (1) of the Convention, each State Party must ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which must examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough investigation. The Committee recalls article 24 (3), which requires each State Party to take all appropriate measures to search for, locate and release disappeared

persons and, in the event of death, to locate, respect and return their remains. Moreover, the Committee recalls that, when faced with an allegation of disappearance, States Parties must, in accordance with their obligations under articles 12 and 24 of the Convention, immediately devise a comprehensive strategy that includes an action plan and a timeline to conduct an exhaustive search for the disappeared person, and which takes into account all available information, including the context in which the alleged disappearance occurred.<sup>17</sup> This strategy must be periodically reviewed and must comply with due diligence requirements at all stages of the search process (including the requirements that investigations be immediate, thorough and launched on the authorities' own initiative), ensuring the competence and independence of the professionals involved.<sup>18</sup> States Parties must also ensure that the strategy adopted defines the actions to be taken in an integrated, efficient and coordinated manner and that these actions are accompanied by appropriate means and procedures to locate the disappeared person and investigate the persons responsible for the disappearance.<sup>19</sup> The Committee also recalls that such a strategy must have a differential approach and that all stages of the search must be conducted with full respect for the particular needs of the victim.<sup>20</sup>

10.14 The Committee takes note of the authors' allegations that the authority responsible for the search for Mr. Marín Ramírez has been negligent and that the investigation has not yet revealed any evidence that could help to determine who committed or participated in his disappearance, much less to establish his whereabouts. The Committee also takes note of the State Party's arguments that, after the complaint was filed, the prosecutor's office provided continuing assistance to the victim's family through a police team specialized in crisis management and negotiation and undertook investigative actions to identify the location where Mr. Marín Ramírez was possibly being held captive. The State Party also emphasizes that various investigative actions were carried out, but that it has not yet been possible to establish his whereabouts. However, the Committee considers that, beyond making a general reference to the complexity of the context in the region, the State Party has failed to justify the clear delay in the search and investigation procedures.

10.15 Consequently, the Committee considers that the State Party has not complied with its obligation under article 12 (1) of the Convention to undertake a prompt, effective, thorough and impartial investigation into the disappearance of Mr. Marín Ramírez or with its obligation under article 24 (3) to take appropriate measures to search for, locate and/or release Mr. Marín Ramírez and, in the event of his death, to locate, respect and return his remains. The Committee cannot, therefore, consider that the authorities proceeded to undertake a prompt, effective and thorough investigation into the disappearance of Mr. Marín Ramírez within the meaning of article 12 (1) of the Convention. Thus, the Committee concludes that the State Party has not complied with its obligation to identify those responsible through an investigation carried out with due diligence. In the light of the foregoing, the Committee concludes that the facts of the present case disclose a violation of article 12 (1) and article 24 (3) of the Convention.<sup>21</sup>

10.16 With regard to the remaining allegations under article 24 of the Convention, the Committee recalls that, under article 24 (2), each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the whereabouts of the disappeared person, and that the State Party must take appropriate measures in this regard. The Committee takes note of the authors' argument that, as members of the disappeared person's family, they still do not know the truth about the circumstances of Mr. Marín Ramírez's disappearance. The Committee notes the State Party's argument that there has been communication and follow-up with the family of Mr. Marín Ramírez and that a meeting was held with members of his family in January 2024.

<sup>17</sup> CED/C/19/2, para. 11.

<sup>18</sup> Ibid., and Guiding Principles for the Search for Disappeared Persons, principles 6–8.

<sup>19</sup> CED/C/19/2, para. 11; and Guiding Principles for the Search for Disappeared Persons, principles 10–12.

<sup>20</sup> CED/C/19/2, para. 20; and Guiding Principles for the Search for Disappeared Persons, principle 14.

<sup>21</sup> *Berrospe Medina v. Mexico*, para. 7.7.

10.17 However, in the light of the information set out above regarding the investigation and the search for Mr. Marín Ramírez, and the fact that seven years and five months have elapsed since the disappearance occurred, the Committee considers that the State Party has failed to take appropriate measures that would have allowed the authors to know the truth regarding the circumstances of his enforced disappearance, within the meaning of article 24 (2) of the Convention. Consequently, the Committee concludes that the facts of the present case disclose a violation of the authors' rights under article 24 (2) of the Convention.

10.18 In the absence of any reparation measures taken by the State Party in respect of the authors, the Committee considers that the State Party failed in its duty to guarantee the victims' right to reparation and to prompt, fair and adequate compensation, in accordance with article 24 (4) of the Convention, read in conjunction with article 24 (5). In the light of the foregoing, the Committee concludes that the facts of the present case disclose a violation of the rights of Mr. Marín Ramírez and of the authors under article 24 (4) of the Convention, read in conjunction with article 24 (5).<sup>22</sup>

11. The Committee, acting under article 31 (5) of the Convention, considers that the facts before it disclose a violation of article 1, read in conjunction with article 2; article 12 (1); article 24 (2) and (3); and article 24 (4), read in conjunction with article 24 (5), in respect of Mr. Marín Ramírez; and article 12 (1) and article 24 (2), (3) and (4), read in conjunction with article 24 (5), of the Convention, in respect of the authors.

12. In accordance with article 31 (5) of the Convention, the Committee urges the State Party to:

(a) Conduct a prompt, effective, exhaustive, impartial, independent and transparent investigation into the circumstances of the disappearance of Mr. Marín Ramírez, with a view to establishing the truth about his enforced disappearance;

(b) Provide the authors with detailed information on the progress and results of that investigation;

(c) Prosecute, try and punish the perpetrators and those responsible for the enforced disappearance of Mr. Marín Ramírez;

(d) Take all appropriate measures to search for, locate and release Mr. Marín Ramírez and, in the event of his death, to locate, respect and return his remains, taking account of the specific cultural framework of the authors as members of Indigenous communities, in accordance with principle 4 of the Guiding Principles on the Search for Missing Persons;

(e) Grant the authors comprehensive reparation and prompt, fair and adequate compensation, in accordance with article 24 (4) and (5) of the Convention;

(f) Adopt all measures necessary to give effect to the guarantees of non-repetition established in article 24 (5) (d) of the Convention by, in particular:

(i) Giving effect to the recommendations set out by the Committee in its report on its visit to Mexico,<sup>23</sup> specifically paragraphs 31 and 32, regarding the implementation of a national policy to prevent and eradicate enforced disappearance, and paragraphs 14, 74 and 75 of its recommendations,<sup>24</sup> regarding the establishment of a global and comprehensive search and investigation strategy and a differentiated approach in the search and investigation procedures;

(ii) Establishing a coordination mechanism between state, local and Indigenous authorities for search and investigation procedures relating to enforced disappearances in the region.

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<sup>22</sup> Ibid., para. 7.11.

<sup>23</sup> CED/C/MEX/VR/1 (Findings).

<sup>24</sup> CED/C/MEX/VR/1 (Recommendations).

13. The Committee also urges the State Party to publish the present Views and to disseminate them widely, particularly but not exclusively among officials in state prosecutor's offices and the Prosecutor General's Office who investigate disappearances.

14. The Committee hereby requests the State Party to provide it with information, within six months of the date of transmission of the present Views, on the action that it has taken to implement the recommendations set out above.



## Annex I

[English only]

### **Individual opinion of Committee member Olivier de Frouville (concurring)**

1. I fully agree with the solutions reached by the Committee in these findings, both on admissibility and in substance. I am writing this opinion to clarify some legal issues that have not been addressed in detail by the Committee.

2. In the present case, the Committee was confronted not only with particularly complex facts but also with particularly difficult problems of interpretation of the International Convention for the Protection of All Persons from Enforced Disappearance. It is for this reason that the Committee decided to convene both parties for a hearing, thus implementing rule 78 of its rules of procedure for the first time.

3. Alexis Marín Ramírez was abducted by armed men who were clearly not State agents. Moreover, the authors of the communication do not argue otherwise at any time. In the first few days after the abduction, negotiations were initiated between the family and the kidnappers. The fate of Mr. Marín Ramírez was therefore not completely unknown, and a ransom demand seemed to be the price of his release. But from the moment the negotiations were interrupted, Mr. Marín Ramírez's family remained without news. The case therefore appears at first glance to be a kidnapping with a tragic outcome. Do such facts fall within the scope of the Convention? This is the difficult issue with which the Committee had to grapple. The answer is far from obvious, partly because of the criteria delimiting the scope of the Convention, but also because of the complexity of the circumstances specific to the case, which the Committee was able to grasp properly only through the concept of "acquiescence" contained in the Convention.

#### *Delimitation of the scope of the Convention*

4. States Parties assume obligations regarding two types of facts, which are described in articles 2 and 3 of the Convention, respectively, and which define its scope of application. Article 2 defines "enforced disappearance" as such. This is the purpose of the Convention, its *raison d'être*. This definition includes a direct or indirect connection to the State, insofar as the various elements listed in the article are to be carried out "by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State". But the authors of the Convention also provided that States Parties must assume certain more limited obligations under article 3 in relation to "acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State".

5. This means that disappearances committed by private individuals or non-State actors may fall within the "scope" of the Convention, provided that they themselves fall within the provisions of either article 2 or article 3. In other words, provided that the "criteria" set out in article 2 or article 3 are met, States have obligations under the Convention not only when a disappearance is perpetrated by State agents, but also when a disappearance is committed by private persons or non-State actors. These "criteria" remain to be determined, and this is where the question becomes complicated because the Convention is neither clear nor exhaustive on this point.

6. With the aim of clarifying certain fundamental points of interpretation, the Committee adopted, in March 2023, its statement on non-State actors in the context of the International Convention for the Protection of All Persons from Enforced Disappearance.<sup>1</sup> It is therefore normal that in the context of this case, the Committee refers to it extensively. In that statement, the Committee clarified the concepts of "authorization", "support" and "acquiescence",

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<sup>1</sup> CED/C/10/Rev.1.



which are not defined anywhere in the Convention. It also adopted, in my view, a strict interpretation of article 3 and the concept of “acts” contained therein, namely that this article applies only to disappearances that could be described as “acts tantamount to enforced disappearance”, which therefore exclude other forms of worrying disappearances, including those that are involuntary on the part of the disappeared person, such as kidnappings or abductions. Such a strict interpretation stems both from the wording of article 3 – which explicitly refers to all the elements included in article 2, apart from the link with the State – but also from the object and purpose of the Convention, which was not adopted by States to prevent or punish any form of “disappearance” as a consequence of ordinary crimes, and even less so to protect persons from going missing in other circumstances unrelated to a criminal act.

7. On this basis, the Committee was led to determine whether or not the disappearance of Mr. Marín Ramírez fell within the scope of the Convention. At the admissibility stage, the Committee only questions the compatibility of the authors’ claims. The latter clearly articulated their grievances with regard to specific provisions of the Convention. They do not address the question of whether the disappearance falls within the scope of article 2 or article 3, nor does the State Party do so in its replies. At that stage, therefore, it was not necessary for the Committee to address this issue, especially since providing an answer to it would necessarily address the merits of the case.

8. It is therefore at the stage of the merits that the Committee turns to the issue of whether the facts are relevant to the Convention, starting in paragraph 10.3 of its Views, where it explicitly states that it must determine whether the disappearance in question is attributable to the State Party, and therefore falls within the scope of article 2, or whether, on the contrary, it falls within the scope of article 3 of the Convention (and is therefore not attributable to the State Party, while generating a more limited range of obligations).

9. On this basis, the Committee embarks on a long line of reasoning on the grounds of article 2 (paras. 10.4–10.13). It finally concludes that the disappearance is indeed an “enforced disappearance” within the meaning of article 2. It does so based on the observation that disappearance, although committed by non-State actors, is attributable to the State based on its “acquiescence”, a point to which I will return in paragraphs 11 to 14 below.

10. At this point, the Committee could have been more explicit and said that having reached this conclusion, it was not necessary to consider whether the disappearance fell within the scope of article 3. Indeed, the two hypotheses (article 2 or article 3) are mutually exclusive. It could also have stated that, as a result, a third hypothesis was also excluded, namely the hypothesis that, according to the strict interpretation of article 3 referred to above, the disappearance of Mr. Marín Ramírez would fall outside the scope of the Convention, in so far as it constituted a “mere” abduction and not a crime tantamount to “enforced disappearance”, as defined in article 2. In this type of case, it is in the authors’ interest to turn instead to a body that is the guardian of a more generalist treaty, such as the International Covenant on Civil and Political Rights or one of the regional human rights conventions.

*Complexity of the facts of the case and the concept of “acquiescence”.*

11. As we have said, the facts *prima facie* refer to a kidnapping for ransom, followed by a worrying disappearance, in short: a disappearance that is the result of an ordinary crime. However, this does not take into account the general context prevailing in the territory of the State Party, Mexico, and the more specific context prevailing in the locality where Mr. Marín Ramírez was abducted, the Mixteca region in the State of Oaxaca. The Committee has studied this dual context very carefully. To that end, it sent the parties additional written requests for information and convened a hearing. The Committee could not fail to place the disappearance of Mr. Marín Ramírez in the broader phenomenon of disappearances in Mexico. The Committee already had in-depth knowledge of this phenomenon, thanks to the information gathered in the context of the procedures under articles 29, 30 and 33 of the Convention. In particular, at the end of its visit to Mexico, the Committee concluded that the situation was

characterized by “almost absolute impunity” (“between 2 per cent and 6 per cent” of cases of disappearance had resulted in prosecutions).<sup>2</sup>

12. With regard to the more specific context of the Mixteca region, it was of crucial importance for the Committee to understand the factual situation and nature of the conflicts prevailing in the region, including: were there one or more non-international armed conflicts within the meaning of international humanitarian law? This would have led the Committee to article 3 of the Convention. Also of major importance was the understanding of the tangle of competence between the different authorities acting on the ground, taking into account, in particular, the nature of the status of relative autonomy granted to Indigenous populations in the State of Oaxaca.

13. In the light of these various factors, the Committee was able to conclude that what appeared a priori to be an abduction in fact raised the problem of the “acquiescence” of State organs. The Committee has precisely defined this concept in its statement on non-State actors. It implies – to put it briefly – a deliberate form of passivity in the face of a situation that is known or should have been known by the organs of the State.

14. There is no doubt that in the case of Mr. Marín Ramírez, we are on a thin line, with, on the one hand, the hypothesis of a breach of the obligation of due diligence and of a responsibility of the State by “catalysis”,<sup>3</sup> which is within the scope of article 3; and, on the other hand, the hypothesis of the indirect attribution to the State of a disappearance perpetrated by private persons, which falls under article 2. It was the particular facts of the case – the passivity of State organs, which in this case was persistent and continuous over a long period of time, without such passivity being justified, the local context and the general context of enforced disappearances in Mexico – that led the Committee to the certainty that the disappearance fell within the second hypothesis and could therefore be attributed to the State Party.

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<sup>2</sup> CED/C/MEX/VR/1 (Findings), para. 25.

<sup>3</sup> A term used by one of the International Law Commission Special Rapporteurs on State responsibility, Roberto Ago, to refer to the situation in which the State is responsible for its omissions in relation to acts attributable to private persons and not for those acts themselves.

## Annex II

[Español únicamente]

### Voto particular (concurrente) de Juan Pablo Albán Alencastro, miembro del Comité

1. He concurrido con mis colegas a la aprobación del dictamen respecto de la comunicación núm. 5/2021, relacionada con la desaparición forzada en México del Sr. Marín Ramírez y la situación de sus padres, la Sra. Ramírez Barrios y el Sr. Ramírez Barrios. Estando de acuerdo con el análisis y motivación desarrollados por el Comité, estimo importante plantear unas reflexiones adicionales en torno a tres cuestiones, la primera de orden procesal y las otras dos de carácter sustantivo.
2. La primera cuestión se refiere al previo agotamiento de los recursos de la jurisdicción interna. Al respecto, la Convención, cuya supervisión de cumplimiento se nos ha confiado, establece, en su artículo 31, párrafo 2 d), que el Comité declarará inadmisibile cualquier comunicación si los recursos internos efectivos disponibles no han sido agotados.
3. En el presente caso el Estado Parte alegó durante el trámite ante el Comité que la presente comunicación es inadmisibile por falta de agotamiento de los recursos ya que, a la fecha, hay diversas diligencias de investigación que continúan pendientes.
4. El Comité declaró admisible la comunicación y al efecto consideró en el párrafo 9.6 del dictamen que,
 

desde la desaparición del Sr. Marín Ramírez y de que fueran presentadas las denuncias correspondientes a nivel nacional, y a pesar de diversas solicitudes presentadas por los autores, las investigaciones en curso no han producido ningún resultado y el Estado Parte no ha justificado el retraso [...]. En consecuencia, el Comité considera que dicho recurso ha excedido los plazos razonables y concluye que el presente caso cumple con los requisitos del artículo 31, párrafo 2, de la Convención.
5. Sin perjuicio de ello debo expresar que, en mi opinión, no es posible subordinar la admisibilidad de una comunicación individual al agotamiento de un recurso que carece de eficacia porque los autores de tal comunicación se encuentran procesalmente impedidos de llevarlo adelante y agotarlo.
6. En un sistema procesal penal acusatorio como el vigente en el Estado concernido y aplicable al presente caso, la titularidad del ejercicio de la acción penal frente a un delito de desaparición forzada corresponde exclusivamente al órgano oficial de investigación y acusación, esto es, la Fiscalía. Es decir, las víctimas no tienen legitimación procesal para iniciar e impulsar el proceso penal sino únicamente para llevar a las autoridades la *notitia criminis*, lo que en efecto ocurrió. En los sistemas procesales en los que la víctima puede participar en la investigación preprocesal o en el proceso penal, tal participación no es una obligación sino una prerrogativa, y tratándose de delitos perseguibles de oficio, la obligación de promover e impulsar la investigación y eventualmente el proceso penal recae en el Estado. En tales circunstancias, exigir que la víctima agote la vía penal que ni siquiera puede activar resulta una carga irrazonable.
7. La segunda cuestión se relaciona con la noción de aquiescencia, a partir de la cual el Comité ha concluido en el párrafo 10.12 del dictamen que la desaparición forzada del Sr. Marín Ramírez, perpetrada por actores no estatales, es responsabilidad del Estado Parte.
8. Al respecto, es importante señalar que el Estado Parte puede ser responsabilizado por la actuación de sujetos que no forman parte de su estructura orgánica si se cumplen dos requisitos: a) que conozca un riesgo real e inminente de una infracción a un deber

internacional, y b) que no adopte las medidas razonables para prevenir la concreción de tal riesgo<sup>1</sup>.

9. En el dictamen sobre la presente comunicación individual, el Comité nota en el párrafo 10.7 que: “la desaparición del Sr. Marín Ramírez ocurrió en un contexto de graves violaciones de derechos humanos por parte de grupos de personas armadas que operaban en la zona, incluidos otros casos de desapariciones y otros delitos graves”.

10. Por eso opino que, más allá de la motivación expuesta en el dictamen, es relevante para el análisis del presente caso lo expresado por el comité en su Declaración sobre los agentes no estatales en el contexto de la Convención Internacional para la Protección de Todas las Personas contra las Desapariciones Forzadas<sup>2</sup>, respecto a que existe aquiescencia en el sentido del artículo 2 de la Convención cuando hay un cuadro persistente conocido de desaparición de personas y el Estado no ha adoptado las medidas necesarias para impedir nuevos casos de desaparición, investigarlos y sancionarlos, y que la carga de probar que no existió aquiescencia le corresponde al propio Estado, mediante la justificación documentada de las acciones emprendidas para impedir y, de ser el caso, hacer frente al hecho, así como de la eficacia de tales acciones. De esa manera, el umbral de protección frente a la desaparición se eleva, así como las obligaciones que competen al Estado que no se limitan a aquellas recogidas explícitamente en el artículo 3 de la Convención.

11. La tercera cuestión tiene que ver con el alcance del derecho a la verdad. En el párrafo 7.11 del dictamen respecto de la comunicación individual núm. 4/2021<sup>3</sup>, este Comité concluyó que el Estado no tomó las medidas adecuadas para hacer efectivo el derecho a la verdad, considerando que,

a más de nueve años de los hechos, la autora y la sociedad mexicana desconocen la verdad de lo ocurrido al Sr. Mendoza Berrospe. Ni la familia ni la sociedad mexicana conocen los nombres de los responsables de los hechos y no han sido oportuna y suficientemente informados sobre las circunstancias de la desaparición.

12. Es decir, en aquella ocasión, el Comité tomó en cuenta no solo la dimensión individual del derecho a la verdad, como hace en el párrafo 10.16 del presente dictamen, sino también la dimensión colectiva.

13. En mi opinión, es importante insistir en el enfoque adoptado en el caso relativo al Sr. Mendoza Berrospe, pues en el derecho internacional de los derechos humanos ya es indiscutible la existencia de un derecho colectivo de la sociedad a la verdad, con miras a construir una memoria común y, con ello, evitar la recurrencia futura de hechos similares, promoviendo la empatía social con las víctimas.

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<sup>1</sup> Corte Penal Internacional, *United States Diplomatic and Consular Staff in Tehran, United States v. Iran*, fallo, *I.C.J. Reports* 1980.

<sup>2</sup> CED/C/10, párrs. 6 y 7.

<sup>3</sup> *Berrospe Medina c. México* (CED/C/24/D/4/2021).