

INTRODUCTORY NOTE TO VIEWS ADOPTED UNDER ART. 31 OF THE CONVENTION, CONCERNING  
COMMC'N NO. 4/2021 (U.N. COMM. ENFORCED DISAPPEARANCES)  
BY ARIEL DULITZKY\*  
[March 24, 2023]

## Introduction

On March 24, 2023, the UN Committee on Enforced Disappearances (the Committee or CED) delivered its unanimous “Views adopted under art. 31 of the [International Convention for the Protection of All Persons from Enforced Disappearances],” concerning communication no. 4/2021 on Mexico. The decision relates to the disappearance of Yonathan Isaac Mendoza Berrospe on December 11, 2013, in the city of Veracruz, Mexico. The decision determined that he was a victim of enforced disappearance and that the state failed to guarantee the rights to an effective search, a prompt and effective criminal investigation, and reparations, including the right to know the truth. The Committee considered that his mother was also a victim of the violation of her rights.

## Background

The International Convention for the Protection of All Persons from Enforced Disappearances (the Convention) entered into force for Mexico on December 23, 2010, after its ratification. Mexico recognized, under Article 31 of the Convention, the competence of the Committee to consider individual communications on October 2, 2020. Relevant to the case under analysis, the disappearance of Mr. Mendoza occurred after the ratification of the Convention but before the acceptance of the competence of the Committee to receive individual complaints given that Mexico’s obligations under the Convention already existed at the time Mr. Mendoza Berrospe’s alleged enforced disappearance commenced. The Committee stated that, given the continuous nature of enforced disappearances and the fact that Mr. Mendoza Berrospe’s whereabouts continue to be unknown, the Committee had competence *ratione temporis* to consider the communication. The treaty body did not feel the need to further develop the relationship between ratification and acceptance of the Committee’s jurisdiction for its temporal competence.

The Committee’s decision comes at a time when Mexico confronts one of the worst (if not the worst) situations of enforced disappearances in the world. The Committee has been concerned about this situation, and it has used all the traditional and new innovative tools that the Convention grants to it to deal with this grave situation. On the traditional procedures, the Committee had already considered the periodic report of Mexico and issued follow-up observations.<sup>1</sup>

On the new or more updated tools provided by the Convention, the Committee conducted its first-ever visit to a country in 2021 when it traveled to Mexico.<sup>2</sup> The procedure of inquiry is an updated and improved mechanism compared with previous treaties. The CED can activate the mechanism if it receives reliable information that a state is “seriously violating” the Convention (Article 33). A crucial difference from previous treaties is that the inquiry procedure is not optional, as states are not required to make a special declaration and are not provided with the possibility of opting out. After receiving multiple requests, the CED triggered the formal procedure for an inquiry visit to Mexico during its tenth session in 2013. On August 30, 2021, after eight years of exchanges, the state accepted the visit, and a delegation of four members of the Committee visited the country from November 15, 2021, to November 26, 2021. However, there is reason for skepticism about the effectiveness of the CED’s sustained efforts over most of its existence to conduct the inquiry visits. From 2013, the year of the visit request, to 2021, the year of the visit, there were more than 48,000 new disappearances in Mexico. Even more concerning is what happened during and after the visit. According to the CED, the official figures available on November 26, 2021, showed 95,121 missing persons, of whom 112 were reported missing during the Committee’s visit.<sup>3</sup> Sadly, on May 17, 2022, only six months after its visit and some weeks after the publication of its inquiry findings, the CED reported that Mexico had reached 100,000 officially registered disappearances. The Committee, unlike other treaty bodies, issued a press release on this concerning milestone.<sup>4</sup>

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Article 30 of the Convention creates a new procedure of “Urgent Actions.” This procedure, which is unique among treaty bodies, gives the Committee the mandate to request a state party to take all necessary measures, including interim measures, to immediately seek and locate a disappeared person. The numbers demonstrate the importance of the Urgent Actions. As of March 31, 2023, the Committee had registered a total of 1,578 requests for urgent action.<sup>5</sup> Two countries, Iraq (with 575 cases or 36.4 percent of the total) and Mexico (with 544 cases or 34.5 percent of the total) represent the vast majority of Urgent Actions.<sup>6</sup> The potential effectiveness of these mechanisms is exhibited by the fact that 469 disappeared persons, including 442 still alive, have been located so far.<sup>7</sup> Regrettably, it should be noted that most of the Urgent Actions remain active because, even after several years, the persons have not been found. Remarkably, the Mexican Supreme Court of Justice ruled that the Urgent Actions requested by the Committee are binding to all Mexican authorities.<sup>8</sup> The Committee activated the Urgent Action procedure in the case of Mr. Berrospe Mendoza (7.9). Regrettably, in its decision, the Committee failed to develop any explanation on the relationship between Article 30 of the Convention (Urgent Action) and Articles 12 and 24 (duty to investigate and search and right to be searched). There was no discussion of whether the fact that the person’s fate or whereabouts remained unknown due to the problems with the search and investigation (7.5–7.11) constituted an autonomous violation of Article 30 or whether the failure of the Urgent Action is an additional violation of the duties under Articles 12 and 24.

### The Significance and Context of the Committee’s Decision

When deciding the case under review, the Committee was familiar with the grave situation in Mexico. The decision is flawless in terms of what it says and the standards it applies. However, the Committee missed the opportunity to further develop other issues. As this is only the fourth individual communication decided by the Committee, it is a rare opportunity to understand the Committee’s interpretation of the Convention on specific concrete and personal situations.

Following the consistent case law of other human rights bodies, the Committee found that there was an undue delay in the federal investigation, and thus the authors were excused from exhausting that remedy. The Committee did not articulate whether the *amparo indirecto* (a kind of habeas corpus in Mexico and extremely relevant in cases of enforced disappearances) pursued and exhausted by the authors was an adequate remedy in the case. The Committee did analyze the *amparo indirecto* for the state duty to investigate (7.9).

The most important aspect of the Committee’s decision is its detailed analysis of the duty to search and investigate the disappearance. Based on articles 12 and 24 of the Convention, the Committee implicitly distinguished the duty to search for the disappeared person from the related but separate duty to conduct investigations (including criminal ones) (7.5 and 7.7). The Committee based its analysis on applying the Guiding Principles for the Search for Disappeared Persons.<sup>9</sup> I would argue that the Guiding Principles are the most important contribution made by the Committee so far.

The Committee dissected the different measures taken by Mexico to determine that the state failed to act with due diligence and that its actions were ineffective and untimely. In its analysis, the Committee followed consistent international precedents and asserted that the burden of proof in cases of enforced disappearance can rest exclusively on the victims, as much of the evidence is under the state’s control (7.3). If the author of the communication provides enough direct or circumstantial evidence of the state’s involvement, then the burden of proof shifts to the state to provide a pertinent explanation. The Committee was slightly inconsistent when it failed to apply the same standard in rejecting the allegations that the state did not prevent the victim from being taken to a military detention facility. The Committee simply considered that the author did not “duly substantiate her claims” for admissibility purposes (6.6). The Committee did not elaborate on the difference between this allegation and the others, nor on the difference between substantiating an allegation for the purpose of admissibility versus merits.

The decision correctly concludes that Mr. Mendoza Berrospe was a victim of an enforced disappearance. The Convention recognizes a new right not to be disappeared. However, in this case the Committee did not advance any discussion on whether this new right creates any additional state obligations or provides extra protection different from already existing international human rights law general obligations and jurisprudence. Similarly,

the Committee understood that the mother of the disappeared person was also a victim and recommended broad reparation measures per article 24 of the Convention (7.10–7.11 and 9).

Article 28 of the Convention requires the Committee to “cooperate” with all the relevant organs of the United Nations and to “consult” other treaty bodies, in particular the Human Rights Committee (HRC). The Committee’s Rules of Procedure also refers to the cooperation with the Working Group on Enforced or Involuntary Disappearances (WGEID). In this case, the Committee followed this conventional mandate by extensively using precedents from the Human Rights Commission, The Inter-American Court of Human Rights, and the Working Group on Enforced or Involuntary Disappearances.

### Conclusion

The decision from the Committee is an extremely detailed assessment of the facts and correctly applies the content of the Convention interpreted in light of extensive practice developed by other human rights bodies. However, the Convention provides new tools and recognizes new rights that the Committee failed to fully embrace and develop in this case. Time will tell whether the Committee engages in a more creative approach that fully expands the scope of the Convention.

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### ENDNOTES

- 1 Concluding Observations on the Report Submitted by Mexico Under Article 29, paragraph 1, of the Convention, Committee on Enforced Disappearances, U.N. Doc. CED/C/MEX/CO/1 (Mar. 5, 2016), Follow-up Observations on the Additional Information Submitted by Mexico Under Article 29(4) of the Convention, Committee on Enforced Disappearances, U.N. Doc. CED/C/MEX/FAI/1 (Dec. 2, 2020).
- 2 Informe del Comité contra la Desaparición Forzada sobre su visita a México en virtud del artículo 33 de la Convención, Información sobre la visita, hallazgos y primera parte de las recomendaciones, Committee on Enforced Disappearances, U.N. Doc. CED/C/R.9 (Apr. 12, 2022), art. 33.
- 3 Informe del Comité contra la Desaparición Forzada sobre su visita a México en virtud del artículo 33 de la Convención, Información sobre la visita, hallazgos y primera parte de las recomendaciones, Committee on Enforced Disappearances, U.N. Doc. CED/C/R.9, Apr. 12, 2022, art. 33, ¶ 1.
- 4 Mexico: Dark Landmark of 100,000 Disappearances Reflects Pattern of Impunity, UN Experts Warn, U.N. Office of the High Commissioner for Human Rights (May 17, 2022), <https://www.ohchr.org/en/statements/2022/05/mexico-dark-landmark-100000-disappearances-reflects-pattern-impunity-un-experts>.
- 5 Report on Requests for Urgent Action Submitted Under Article 30 of the Convention, Committee on Enforced Disappearances, U.N. Doc CED/C/24/3 ¶ 7 (May 24, 2023).
- 6 *Id.* ¶ 7.
- 7 *Id.*
- 8 Press Release, Suprema Corte de Justicia de la Nación (SCJN), El cumplimiento de las medidas y acciones urgentes emitidas por el Comité Contra la Desaparición Forzada de la ONU es obligatorio para las autoridades del Estado Mexicano: Primera Sala, No. 172/2021 (June 17, 2021), <https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6479>.
- 9 Committee on Enforced Disappearances, Guiding principles for the search for disappeared person, CED/C/7 (May 8, 2019), <http://undocs.org/en/CED/C/7>.

VIEWS ADOPTED UNDER ART. 31 OF THE CONVENTION, CONCERNING COMMUN NO. 4/2021  
(U.N. COMM. ENFORCED DISAPPEARANCES)\*  
[March 24, 2023]

United Nations

CED/C/24/D/4/2021



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

Distr.: General  
24 May 2023  
English  
Original: Spanish

**Committee on Enforced Disappearances**

**Views adopted by the Committee under article 31 of the Convention, concerning communication  
No. 4/2021\*\*\*\*\* \*\*\*\***

|                                    |   |
|------------------------------------|---|
| <i>Communication submitted by:</i> | Angélica María Berrospe Medina (represented by counsel, Juan Carlos Gutiérrez Contreras, of Litigio Estratégico en Derechos Humanos A.C. [IDHEAS])  |
| <i>Alleged victim:</i>             | Yonathan Isaac Mendoza Berrospe and the author  |
| <i>State party:</i>                | Mexico  |
| <i>Date of communication:</i>      | 25 July 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>  | 24 March 2023   |
| <i>Subject matter:</i>             | Enforced disappearance of a minor following his arrest at home by purported State agents  |
| <i>Procedural issues:</i>          | Failure to exhaust domestic remedies  |
| <i>Substantive issues:</i>         | Enforced disappearance  |
| <i>Articles of the Convention:</i> | 1, 2, 12 (1), 23 (3) and 24 (2–5)   |

1.1 The author of the communication is Angélica María Berrospe Medina, a Mexican national born on 6 September 1977, acting on her own behalf and on that of her son, Yonathan Isaac Mendoza Berrospe,<sup>1</sup> a Mexican national born on 13 March 1996. The author claims that the State party has violated her son's rights under articles 1, 2, 12 (1), 23 (3) and 24 (2– 5) of the Convention and her own rights under articles 12 (1) and 24 (2–5) of the Convention. The author is represented by counsel.

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\*\*Adopted by the Committee at its twenty-fourth session (20–31 March 2023).

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

\*\*\*\*An individual opinion by Committee member Juan Pablo Albán-Alencastro (partially concurring) is attached to the present Views. The annex was not formally edited and is 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.

### **Facts as submitted by the author**

2.1 On 11 December 2013, at around 2.30 p.m., around six men broke into the home of Mr. Mendoza Berrospe, then 17 years old, in the city of Veracruz, Mexico, without showing an arrest warrant. The men carried long- and short-barrelled firearms and wore balaclavas, police boots and bulletproof vests marked “police” on the front and back. Mr. Mendoza Berrospe’s aunt, cousin and partner were also at home. The men beat and handcuffed Mr. Mendoza Berrospe, confirmed that he was the person they were seeking and removed him from the dwelling and put him in a black sport utility vehicle (SUV). Mr. Mendoza Berrospe’s partner saw around 20 men who either entered the dwelling or remained outside, including armed men on the corners of the apartment block where he lived who were not letting people through. Mr. Mendoza Berrospe’s aunt and partner identified two white SUVs without registration plates, a black SUV without registration plates – in which Mr. Mendoza Berrospe was placed – and a blue and white patrol car belonging to the Naval Police (which reports to the Ministry of Naval Affairs) with flashing lights and the patrol car number covered by a piece of white card. They also saw other cars blocking access to the street.

2.2 The author arrived home during the operation and was prevented from entering by the police officers guarding the street. She saw the white SUVs, the black SUV, two white cars, and two Naval Police patrol cars occupied by officers wearing navy blue uniforms marked “police”. She immediately called her husband, Mr. Mendoza Berrospe’s father, who did not arrive home until after Mr. Mendoza Berrospe had been abducted. At around 2.40 p.m., they both saw that the two white SUVs, the black SUV and the white cars, all with emergency lights, and the two Naval Police patrol cars, had stopped 100 metres from the dwelling and that their occupants were talking with officers of the Veracruz state police. The author managed to write down the registration number of one of the Naval Police patrol cars.

2.3 The author and her husband immediately went to look for Mr. Mendoza Berrospe at the Naval Police detention centre known as “El Penalito”, in Playa Linda, Veracruz, where the officers on duty denied that he was being held in detention there. After waiting for two hours without any information, they went to the Veracruz Investigation Agency and to the local representation of the federal Attorney General’s Office, where they met with further denials. The next day, namely 12 December 2013, they returned to El Penalito, where a police officer told them to ask at state police headquarters. The state police also denied that Mr. Mendoza Berrospe was being held in detention there, but the author saw leaving the headquarters the black SUV, the two white cars and the Naval Police patrol car with the covered number that had been used in her son’s arrest. In the car park they also saw one of the white SUVs. On 12 and 13 December 2013, the author found out that some other youths detained on 11 December had been released, so she and her husband decided to wait for a few days for Mr. Mendoza Berrospe to be freed.

### ***Complaint to the Veracruz Attorney General’s Office***

2.4 On 17 December 2013, the author reported Mr. Mendoza Berrospe’s disappearance to the Veracruz Attorney General’s Office, providing the registration number of the Naval Police patrol car, and an investigation was opened into the offence of false imprisonment under article 161 of the Criminal Code of the State of Veracruz.<sup>2</sup> An initial agreement on the steps to be taken, dated 20 December 2013, only required that the author be heard; it did not provide for the application of the search protocol in force,<sup>3</sup> nor did it refer to the patrol car identified by the author. The first search report, dated 6 January 2014, indicated that the Naval Police did not use SUVs, had not been conducting operations in the vicinity of Mr. Mendoza Berrospe’s home and did not have him in custody. The report made no mention of any inspections carried out in detention centres or at the scene of the events; nor did it mention the Naval Police patrol vehicles or the SUVs and cars used by the state police. In April 2016, the Attorney General’s Office inspected the detainee register at El Penalito for 11 to 13 December 2013 but did not find Mr. Mendoza Berrospe’s name. The Naval Police also denied having information on the officer who would have admitted prisoners to El Penalito on 11 December, or on the operations that were carried out in December 2013 in the vicinity of Mr. Mendoza Berrospe’s home, claiming that such information did not exist because operational records for oversight purposes were not introduced until 2015. The Veracruz Ministry of Public Security, to which the state police reports, also denied having information about operations conducted in December 2013 in the



vicinity of Mr. Mendoza Berrospe's home. The Public Prosecution Service did not order inspections of the premises of these agencies in order to verify the truth of these denials.

2.5 In March 2014, the State Control, Command, Communications and Computing Centre reported that the video surveillance system of the city of Veracruz did not have any cameras in the vicinity of the author's home. The Centre was not requested to provide information regarding cameras covering the streets along which the Naval Police patrol cars and SUVs would have travelled after Mr. Mendoza Berrospe's arrest. It was not until January 2015 that the authorities ordered a visual inspection of the residence, which took place on 26 June 2015 but was limited to the interior and exterior of the dwelling and did not include nearby streets or any surveillance cameras in the area.

2.6 The first witnesses were heard in late 2014 and 2015. Although those witnesses gave information on the vehicles and officers that had been involved in the operation, no inspections or searches of the Naval Police or state police premises were ordered. Between January and May 2015, summonses were issued to the Naval Police officers who had been using the patrol car identified by the author. Five officers appeared between June and December 2015. While their statements yielded relevant information, no further proceedings were ordered on the basis of their testimonies. It was not until June 2016 that the Naval Police was requested to provide information on the patrols assigned to the area where the author's home is located on 11 December 2013. In July and August 2016, the Naval Police provided the number of the patrol car and the names of the officers assigned to the area. However, the patrol car number differed from the one identified by the author. In their appearances, these officers provided relevant information similar to that provided by the officers who had testified in 2015, but again no further proceedings were ordered on the basis of the information. Neither the chief of the Naval Police, the chief of the state police nor the Veracruz Minister of Public Security were ever called to testify.

#### ***Complaint to the federal Attorney General's Office***

2.7 On 18 February 2014, the author reported Mr. Mendoza Berrospe's disappearance to the then Missing Persons Search Unit (now the Office of the Special Prosecutor for the Investigation of Enforced Disappearances) of the federal Attorney General's Office. On that day, a detailed report<sup>4</sup> was drawn up that served as the basis for a preliminary investigation opened almost four months later, on 10 July 2014.<sup>5</sup>

2.8 The search for Mr. Mendoza Berrospe was conducted solely through routine requests for cooperation from the federal Attorney General's Office to other federal and state institutions, in the absence of a pre-established search plan or strategy. In September 2014, the Federal Police transmitted information to the effect that, on 11 December 2013, several youths had been arrested in the streets near Mr. Mendoza Berrospe's home. In July 2015, information was received containing the timelines and locations of several disappearances of young people in Veracruz in 2013 – three of which, including that of Mr. Mendoza Berrospe, had occurred on 11 December 2013. The same information indicated that the young people had been arrested by the state police or the Veracruz Investigation Agency. In 2015, the Naval Police released a copy of the El Penalito detainee register for 11 and 12 December 2013, stating that it was unable to provide video footage because closed-circuit television cameras had not been installed at that time. In 2018, information was received about the arrest in 2017 and 2018 of several police officers in connection with the disappearances of young people in Veracruz. However, no inspections were performed at the Naval Police or state police premises, no identification procedures were conducted in the presence of witnesses, nor were any other relevant steps taken to determine Mr. Mendoza Berrospe's whereabouts and identify those responsible for his disappearance.

#### ***Application for amparo***

2.9 On 9 January 2014, the author filed an application for *amparo* with the Fourth District Court of the Seventh Circuit of Veracruz in relation to Mr. Mendoza Berrospe's disappearance. The judge received written reports from the authorities concerned, in which they denied having detained Mr. Mendoza Berrospe. On 16 June 2015, without inspecting the premises of these authorities, ordering search measures or establishing his whereabouts, the judge decided to close the case.

## Complaint

3.1 The author claims that the State party has violated the rights recognized under articles 1, 2, 12 (1), 23 (3) and 24 (2–5) of the Convention. She stresses that Mr. Mendoza Berrospe – who was arrested without a warrant and without being caught in flagrante delicto, and thus unlawfully – was the victim of an enforced disappearance, as he was deprived of his liberty by agents of the State party followed by a refusal to acknowledge the deprivation of liberty. As a result, Mr. Mendoza Berrospe was placed outside the protection of the law, in violation of articles 1 and 2 of the Convention.<sup>6</sup>

3.2 The author adds that the local and federal investigations have not been prompt, thorough or effective, in violation of article 12 (1) of the Convention.<sup>7</sup> She maintains that, almost eight years after Mr. Mendoza Berrospe's enforced disappearance, these investigations have not established what happened and that none of the perpetrators have been committed for trial, prosecuted or punished. She points out that the local investigation was not opened into an offence of enforced disappearance per se, that the initial proceedings were not complete or timely and that the federal investigation was opened months after the complaint was filed. In both investigations, relevant measures were either not taken or were taken very late and failed to produce any lines of inquiry or investigative hypotheses, while evidence relevant for the purpose of identifying those responsible was repeatedly withheld or concealed by the Naval Police and the state police of the Veracruz Ministry of Public Security.

3.3 In respect of article 23 (3) of the Convention, the author claims that the State party failed to take appropriate measures to prevent Mr. Mendoza Berrospe's detention in facilities under the control of the military and the disappearances that occurred around that time, when military facilities were used for the detention of civilians, and to ensure reporting to the appropriate bodies vested with powers of review or remedy.

3.4 As for article 24 (2–5), the author claims that Mr. Mendoza Berrospe's family does not yet know the truth regarding the circumstances of his disappearance and has not received any information about his fate and/or whereabouts. She adds that, during the local investigation, the search was not initiated until days after the complaint had been filed, and that the *amparo* judge did not order any search measures.<sup>8</sup> She stresses that no search plan or strategy was drawn up and that efforts to search for and locate Mr. Mendoza Berrospe, both at the state and federal levels, were not timely or exhaustive but belated, routine, intermittent and uncoordinated. Furthermore, the State party has not granted Mr. Mendoza Berrospe's next of kin any form of reparation.

3.5 Lastly, the author claims that the exception to the rule concerning the exhaustion of domestic remedies, under article 31 (2) (d) of the Convention, applies in her case. She contends that Mr. Mendoza Berrospe's family have made use of the available domestic remedies which, in principle, should have been effective, such as the criminal investigation proceedings and the remedy of *amparo*. However, almost eight years after Mr. Mendoza Berrospe's enforced disappearance and the author's having first reported that disappearance, none of the persons responsible have been identified or committed for trial; neither the federal nor the state public prosecution service has given an account of what happened; Mr. Mendoza Berrospe's fate and whereabouts are unknown; and his family has not received any form of reparation. Therefore, the domestic remedies in question have not produced any results, they 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, dated 12 July 2022, the State party requested the Committee to declare the communication inadmissible for failure to exhaust domestic remedies or, in the alternative, to find that the State party has not violated its obligations under the Convention.

4.2 Regarding the inadmissibility of the communication, the State party argues that the present case is still pending resolution by domestic investigating authorities. It stresses that it is the domestic authorities that are competent to determine the likelihood of involvement of officers of the Naval Police and/or the Veracruz state police and, therefore, whether the matter will continue to be investigated as a case of false imprisonment or as a case of enforced disappearance. It contends that these are separate lines of inquiry and that until now, given that no operations by police and/or military forces have been identified, the case has been investigated as an offence of false imprisonment that was most likely committed by an organized crime group.

4.3 The State party maintains that the author has not exhausted available domestic remedies, given that the preliminary investigation into Mr. Mendoza Berrospe's false imprisonment, opened by the federal Attorney General's Office, was joined with four others under an investigation<sup>9</sup> that is still pending resolution. It points out that these cases were joined owing to similarities in the apparent motives behind the disappearances, the modus operandi and the circumstances of time, manner and place. It adds that the National Search Commission has intervened to coordinate institutional efforts to devise a comprehensive and exhaustive strategy for a coordinated, systematic, continuous and effective search for the direct victims. The State party also adds that, during the week of 11 to 15 July 2022, various investigative measures will be taken with a view to shedding light on the facts, identifying the likely perpetrators and determining the fate or whereabouts of Mr. Mendoza Berrospe. A meeting will be organized with the indirect victims with the intention of informing them, in the presence of their advisers and personnel from the Office of the United Nations High Commissioner for Human Rights country office in Mexico and the German Agency for International Cooperation, of the progress and results of the ongoing investigation. Since the investigations have not yet been completed and proceedings are still pending, the available domestic remedies have not been exhausted, thus making the communication inadmissible under article 31 (2) (d) of the Convention.

4.4 As regards the merits of the communication, the State party maintains that it has complied with its obligations to prevent and investigate human rights violations, to punish perpetrators and to provide redress. It points out that the General Act on Enforced Disappearance of Persons, Disappearance Perpetrated by Individuals and the National Missing Persons System, which brought the characterization of the offence of enforced disappearance into line with international standards, entered into force in January 2018.<sup>10</sup> The Act provides a legislative and institutional framework for the prevention, identification and investigation of disappearances and the search for disappeared persons. It also established the National Missing Persons System, the National Search Commission and local search commissions in the federative entities, thus ensuring comprehensive protection for the rights of disappeared persons until their fate or whereabouts are known and providing care, assistance, protection, comprehensive reparation and guarantees of non-repetition for victims. The State party asserts that, according to the Attorney General's Office and the Fourth District Court of the State of Veracruz, all investigative measures are being taken to promptly locate Mr. Mendoza Berrospe and to identify possible perpetrators. Proof of this is that similar cases have been identified and joined so that they can be investigated together in context.

4.5 With regard to article 12 of the Convention, the State party argues that it has complied with its obligations to ensure the right of every individual to report the facts of an enforced disappearance to the competent authorities and to ensure that the authorities conduct a prompt, thorough, effective and impartial investigation. It stresses that various institutions have contributed to a thorough, effective and impartial investigation into Mr. Mendoza Berrospe's case with the aim of establishing his whereabouts, reuniting him with his family as soon as possible and identifying those responsible for his disappearance so that they can be brought before the competent authorities and tried. The State party adds that the three levels of government have actively participated in this investigation through the exchange of information, particularly between the federal and state attorney general's offices and the national and state search commissions. Thus, by sharing lines of inquiry, the authorities developed the theory of a link with five other disappearances of young people that occurred between 6 and 11 December 2013 near the Port of Veracruz in similar circumstances. The State party maintains that this inter-institutional investigation has allowed the National Search Commission to develop a search strategy to locate Mr. Mendoza Berrospe.

4.6 With regard to articles 23 (3) and 24 (2–5) of the Convention, the State party submits that it has taken all measures necessary to prevent Mr. Mendoza Berrospe's detention in facilities under the control of the military and to ensure the right of family members to know the truth about his disappearance. The State party maintains that the federal Attorney General's Office has attempted to gather the information necessary to discover Mr. Mendoza Berrospe's whereabouts. It adds that the Fourth District Court of the State of Veracruz has taken all measures necessary to enable Mr. Mendoza Berrospe to appear before the Court in the context of the indirect *amparo*-application filed by the author, including by requesting various authorities to submit reports in order to determine which authority had deprived him of his liberty. However, upon receiving these reports, the Court was unable to establish that an investigative, police or military authority was responsible for Mr. Mendoza Berrospe's



disappearance. The Court ordered additional measures to locate Mr. Mendoza Berrospe, sending letters to the principal judicial, prison, health and military authorities, among others.

4.7 The State party submits that the author's claim that it has not drawn up a search plan or strategy to locate Mr. Mendoza Berrospe is unfounded. It reports that Mr. Mendoza Berrospe has had a unique reference number in the National Register of Missing and Disappeared Persons since 7 October 2014. Moreover, Mr. Mendoza Berrospe's case has been analysed using a case association methodology in the light of its close similarity with the aforementioned disappearances of five other youths. This has been done in accordance with the provisions on pattern-based searches of the Standardized Protocol for the Search for Missing and Disappeared Persons, which will enable the formulation of hypotheses regarding Mr. Mendoza Berrospe's location and the development of more efficient search strategies.

4.8 The State party adds that there have been four investigations into the disappearance of Mr. Mendoza Berrospe and the five other youths and that a contextual analysis report was prepared. This report includes a general analysis, a timeline and a map of the disappearances, establishing a network of links between them. Moreover, on 17 February 2022, at a meeting held at the Veracruz Attorney General's Office, representatives of the National Search Commission presented a search plan based on the information obtained during the aforementioned investigations. The State party maintains that, once there is certainty about the legal status of locations of interest, a date can be set to begin search activities. Furthermore, it was agreed that the local search commission would prepare a "search for living persons" work plan with a timetable.

4.9 The State party adds that, on 18 March 2022, a meeting was held with the victims' family members, their legal representatives, representatives of the Veracruz Attorney General's Office, the national and local search commissions, the State Human Rights Commission and the Ministry of the Interior, at which the "search for living persons" work plan was presented and an agreement was reached to implement the work plan from 18 to 28 April 2022. The State party maintains that there has been communication and follow-up with Mr. Mendoza Berrospe's family through their legal representative, who has attended meetings at which queries and concerns have been raised and solutions proposed for discovering the whereabouts and/or fate of the disappeared persons. Through this approach, it has been able to compile, analyse and organize information in order to devise an efficient search plan, whose main focus is on search operations in the field, in areas identified through the analysis of call logs and the contextual analyses undertaken by various authorities.

4.10 The State party stresses that it has not faltered in its efforts to locate Mr. Mendoza Berrospe since it learned of his disappearance and has even adopted the strategy of offering a financial reward to any member of the public who can provide truthful and useful information on his whereabouts and the likely perpetrators of his disappearance.

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

5.1 In her comments on the State party's observations, submitted on 23 September 2022, the author reiterates that she did in fact meet the requirement set out in article 31 (2) (b) of the Convention.

5.2 She contends that the remedy of *amparo* has been exhausted and has proved to be ineffective in searching for and locating Mr. Mendoza Berrospe. This is the case because the judge merely sent and received letters, no search measures were taken owing to the negative responses from different authorities, and the validity of the *amparo* injunction was made conditional upon the author's appearance within one year, after which the search was called off. The author reiterates that the criminal investigations undertaken have been unreasonably prolonged.

5.3 Regarding the investigation by the federal Attorney General's Office, described by the State party as a remedy pending resolution (see para. 4.3), the author asserts that it was not until November 2020 that an investigation plan that included Mr. Mendoza Berrospe's disappearance was adopted. Only then was the hypothesis that he had been subjected to enforced disappearance by public servants of the State of Veracruz formulated. She maintains that, more than eight years after the disappearance, the investigation has not shed any light on the facts, none of the perpetrators or persons responsible have been identified, and therefore nobody has been committed for trial or charged.

5.4 The author notes that the Human Rights Committee has found periods of five, seven and almost nine years, respectively, to constitute an excessive delay in cases where domestic remedies had not led to a conclusion in respect

of a disappearance, or where no significant progress had been made in the investigations and the State party had not been able to justify the delay.<sup>11</sup> She reiterates that, in Mr. Mendoza Berrospe's case, the State party has given no reason for the delay beyond a general statement to the effect that federal investigations have not yet concluded.

5.5 With regard to the merits of the communication, the author notes that, as the State party acknowledges, Mr. Mendoza Berrospe's disappearance was investigated as an offence of false imprisonment that "was most likely committed by an organized crime group" (see para. 4.2). However, the author argues that, in the two criminal investigations, the witnesses gave consistent accounts to different authorities, notwithstanding the belated collection of their testimonies, in which they attested that Mr. Mendoza Berrospe was arrested by Veracruz police forces; the investigating authorities have neither disproved nor detected any inconsistencies in those testimonies.

5.6 The author also highlights that the authorities themselves have alluded to the involvement of State agents, giving the facts the character of an enforced disappearance. She argues that, as early as 2015, the federal Attorney General's Office conducted an analysis of five cases, including that of Mr. Mendoza Berrospe, which suggested that, in those cases, the individuals had been abducted by the state police or the Veracruz Investigation Agency. She adds that the Attorney General's Office, in the investigation plan adopted in November 2020, formulated the investigative hypothesis that an offence of enforced disappearance had been committed by public servants of the State of Veracruz. She also adds that the contextual analyses prepared by the Veracruz State Search Commission in December 2020 and July 2022 mentioned that Mr. Mendoza Berrospe's disappearance had been carried out "in the context of Operation Safe Veracruz, specifically during the execution by police forces of the Guadalupe-Reyes security operation" and that it had been "perpetrated by a group of security officers from [the Ministry of Naval Affairs], [the Ministry of Defence], [the Ministry of Public Security] and [the Veracruz Investigation Agency]".<sup>12</sup>

5.7 With regard to the violation of article 12 of the Convention, the author contends that, in cases of enforced disappearance, "the passage of time has a directly proportionate relationship to the limitations to – and, in some cases, the impossibility of – obtaining evidence and/or testimony".<sup>13</sup> The author maintains that the respective attorney general's offices did not undertake without delay an investigation into Mr. Mendoza Berrospe's enforced disappearance as soon as they learned of the fact, nor did they subsequently conduct a thorough investigation.

5.8 With regard to the investigation by the Veracruz Attorney General's Office, the author reiterates that the Office merely ordered an inspection of Mr. Mendoza Berrospe's home, which took place almost a year and a half after the complaint, with no evidence being collected except for the photographs taken. She adds that the eyewitness testimonies were collected between one and two years after the complaint was filed. She also points out that the only inspection of a Veracruz police force took place more than two years after the complaint and was limited to a review of the detainee register; and that the statements of the Naval Police officers assigned to the patrols that might have been involved were collected two to three years after the complaint. The author contends that the authorities failed to take various steps, such as requesting footage from the video surveillance cameras located on relevant streets, and requesting the dispatch logs of the security patrols, on the grounds that they reported all activities by radio. She adds that no steps were taken to identify the patrols involved, despite eyewitnesses' giving details of those patrols and offering to identify them.

5.9 As for the investigation by the federal Attorney General's Office, the author claims that it focused on belatedly collecting testimonies and requesting, through official letters, information that had already been requested between 2016 and 2019; it did not include any analysis of the responses received. She adds that it was only in November 2020 that an investigation plan was drawn up, which, for the first time, formulated the hypothesis of an enforced disappearance committed by public servants of the State of Veracruz. The author maintains that the federal Public Prosecution Service reclassified the offence as an enforced disappearance only on 16 July 2021 and that only then did the authorities begin to investigate the facts as a case of enforced disappearance.

5.10 Regarding the violation of article 24 of the Convention, the author reiterates that the judge presiding over the indirect *amparo* proceedings failed to order an on-site inspection of the premises of the police forces that had participated in the arrest.<sup>14</sup> The Court also failed to apply a differential approach that took into account the fact that Mr. Mendoza Berrospe was a minor at the time of his disappearance.<sup>15</sup> She adds that the Court's closure of the *amparo* proceedings is inconsistent with the principles that searches for disappeared persons should be launched

on the authorities' own initiative,<sup>16</sup> that they cannot depend on information from family members or complainants<sup>17</sup> and that they can never be called off.<sup>18</sup>

5.11 The author argues that the assigning of a unique reference number to Mr. Mendoza Berrospe in the National Register of Missing and Disappeared Persons in 2014 (see para. 4.7) does not mean that a search plan or strategy has been implemented since then. She reiterates that the state Attorney General's Office never adopted a plan and that the federal Attorney General's Office adopted its first plan in November 2020. As for the plan of the National Search Commission (see para. 4.8), it was presented in February 2022, almost four years after the Commission was informed of the disappearance. This plan was transmitted to the Attorney General's Office five months later but, as at the submission date of the author's comments, no action had been taken regarding the locations of interest identified. As for the work plan prepared by the State Search Commission (see para. 4.8), the search activities carried out in April 2022 were conducted in a random manner because the state Attorney General's Office did not have a plan to guide the search.

5.12 The author claims that all of the above demonstrates that the State party failed to undertake search measures immediately and without delay and to take appropriate measures to search for, locate and release Mr. Mendoza Berrospe, if he is alive, in violation of article 24 (3) of the Convention. She points out that the State party has made no reference to reparation for Mr. Mendoza Berrospe's family, in violation of article 24 (4) and (5) of the Convention, and that his next of kin have not yet received any form of reparation.

5.13 The author requests the Committee to urge the State party to:

- (a) Ensure that a diligent and thorough investigation is conducted into Mr. Mendoza Berrospe's disappearance, in which the facts are investigated as an enforced disappearance, serious consideration is given to the hypothesis that officers from the police forces of the State of Veracruz were involved in his disappearance in the context of Operation Safe Veracruz in December 2013, and the respective chains of command are investigated;
- (b) Prosecute, try and punish the perpetrators and those responsible for Mr. Mendoza Berrospe's enforced disappearance;
- (c) Carry out an expeditious search for Mr. Mendoza Berrospe, with effective coordination between the Veracruz Attorney General's Office, the federal Attorney General's Office, the State Search Commission and the National Search Commission, in which a differential approach is duly applied, considering that he was a minor at the time of his disappearance; a search that must continue until his fate and/or whereabouts are ascertained;
- (d) Grant the author and other family members 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 laid down in article 24 (5) (d) of the Convention, which may prevent events such as Mr. Mendoza Berrospe's enforced disappearance from recurring.

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

### ***Consideration of admissibility***

6.1 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.

6.2 The Committee notes that the facts underlying the author's allegations date from December 2013, while the Convention entered into force for the State party on 23 December 2010. The Committee recalls that a State party's obligations under the Convention apply from the date on which the Convention entered into force for it.<sup>19</sup> This means that the State party's international obligations under the Convention already existed at the time Mr. Mendoza Berrospe's alleged enforced disappearance commenced, and therefore article 35 (1) of the Convention

is not an obstacle to the Committee's competence. Furthermore, while on 2 October 2020 the State party recognized the competence of the Committee to consider individual communications under article 31 of the Convention, the Committee recalls the continuous nature of enforced disappearances<sup>20</sup> and the fact that Mr. Mendoza Berrospe's alleged enforced disappearance continues to this day. In view of the above, the Committee concludes that there is no obstacle to its competence *ratione temporis* to consider the present communication.

6.3 The Committee notes the State party's argument that the communication should be declared inadmissible for failure to exhaust available remedies by virtue of article 31 (2) (d) of the Convention (see paras. 4.2 and 4.3). The State party maintains that the preliminary investigation by the federal Attorney General's Office is pending resolution, and that proof of this is that various proceedings are still ongoing (see para. 4.3). For its part, the Committee takes note of the author's claims that the remedy of indirect *amparos* sought to search for Mr. Mendoza Berrospe has been exhausted and was ineffective, and that the criminal investigations undertaken by the state and federal attorney general's offices have been unreasonably prolonged (see paras. 3.5 and 5.2). The Committee also notes the author's argument that, more than eight years after Mr. Mendoza Berrospe's disappearance and the submission of the complaints, the ongoing investigations have not produced any results and the State party has given no reason for the delay beyond a general statement to the effect that one of the pending preliminary investigations has not yet concluded (see paras. 3.5 and 5.4).

6.4 The Committee recalls that the purpose of the requirement that domestic remedies be exhausted is to give the State party the opportunity to fulfil its duty to protect and guarantee the rights enshrined in the Convention.<sup>21</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>22</sup> The Committee also recalls that, according to the rule, the domestic remedies in question must be effective and available.<sup>23</sup> The Committee further recalls that, 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 author are effective and do not exceed reasonable time limits.<sup>24</sup>

6.5 In the present case, the Committee notes that the State party mentions the investigations initiated by the federal Attorney General's Office (see para. 4.3) as the sole remedy that has not been exhausted. However, the State party has not responded to the author's allegations that the criminal investigations, including the federal investigation, have been unreasonably prolonged and have not yielded significant progress or results (see paras. 3.5, 5.3 and 5.4). The Committee notes that, while criminal investigations must be conducted as part of a process whose duration is tied to the complexity of each case, the rule that domestic remedies must first be exhausted should not lead to any undue delay in the resolution of the case depriving the victims of effective access to this international body. In particular, the Committee notes the author's argument that it was not until November 2020 – more than six years after she filed the complaint in February 2014 – that the federal Attorney General's Office adopted an investigation plan in relation to Mr. Mendoza Berrospe's disappearance. In view of the State party's failure to justify the apparent delay in the pending investigations, the Committee considers that, almost nine years after the complaint was filed with the federal authority, this remedy has been unreasonably prolonged and does not have to be exhausted for the purposes of the admissibility of the present communication. Consequently, the Committee considers that article 31 (2) (d) of the Convention does not constitute an obstacle to its finding the communication admissible.

6.6 The Committee considers that the author has failed to duly substantiate her claims under article 23 (3) of the Convention (see paras. 3.3 and 5.12) for the purposes of admissibility, and declares them inadmissible.<sup>25</sup>

6.7 The Committee considers that the facts and the author's other allegations, relating to Mr. Mendoza Berrospe's alleged enforced disappearance, the lack of a prompt and thorough search and investigation, and the lack of access to the truth about the circumstances of the disappearance and to reparation for the victims, have been duly substantiated for the purposes of admissibility. Accordingly, in the absence of any other question as to the admissibility of the communication, the Committee declares it admissible insofar as it raises questions under articles 1, 2, 12 (1) and 24 (2–5) of the Convention with regard to Mr. Mendoza Berrospe, and articles 12 (1) and 24 (2–5) of the Convention with regard to the author, and proceeds to consider it on the merits.

### *Consideration of the merits*

7.1 The Committee has considered the present communication in the light of all the information made available to it by the parties.

7.2 In the present case, the Committee must determine whether the acts to which Mr. Mendoza Berrospe was subjected constitute an enforced disappearance within the meaning of article 2 of the Convention. The Committee recalls that, under this article, enforced disappearance commences upon the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State. Furthermore, to constitute an enforced disappearance, the deprivation of liberty must be followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, thus placing the person outside the protection of the law.<sup>26</sup>

7.3 The Committee notes the author's argument that Mr. Mendoza Berrospe is the victim of an enforced disappearance, as he was deprived of his liberty by agents of the State party, followed by a refusal to acknowledge that deprivation of liberty, and that, consequently, he was placed outside the protection of the law (see para. 3.1). The Committee observes that the State party has not disputed the author's description of the facts relating to Mr. Mendoza Berrospe's arrest, nor provided information to refute the alleged involvement of State agents but rather contends in its observations that, since no operations by "police and/or military forces" had been identified at the time, the case was investigated "as an offence of false imprisonment that was most likely committed by an organized crime group" (see para. 4.2). The Committee recalls that the burden of proof cannot fall exclusively on the author of the communication, since the alleged victims and the State party do not always have equal access to the evidence and often only the State party has access to the relevant information.<sup>27</sup> In other words, when the means of proof are available to the State party, its defence cannot rest on the authors' inability to provide evidence that cannot be obtained without the State's cooperation.<sup>28</sup> The Committee also considers that the existence of sufficient direct or circumstantial evidence of the involvement of State agents reverses the burden of proof and requires the State party to refute that evidence and the allegation that the disappearance is attributable to it, either through the direct involvement of State agents or through persons acting with the authorization, support or acquiescence of the State, by means of an investigation carried out with due diligence.<sup>29</sup>

7.4 In the present case, the Committee notes the author's claims that Mr. Mendoza Berrospe was abducted by men who broke into his home at around 2.30 p.m. on 11 December 2013 (see para. 2.1). According to the author, the men were wearing police boots and bulletproof vests marked "police" on the front and back and were driving what appeared to be Naval Police vehicles with flashing lights, some with the patrol car number obscured, which were later seen with patrol cars of the Veracruz state police (see paras. 2.1 and 2.2). The Committee also notes the author's argument that all the accounts given by eyewitnesses before different authorities were consistent and attested to the participation of Veracruz police forces, and that the investigating authorities have neither disproved nor detected inconsistencies in those testimonies (see para. 5.5). The Committee further notes that, according to the contextual analyses prepared by the Veracruz State Search Commission in December 2020 and in July 2022, Mr. Mendoza Berrospe's disappearance was carried out by police and security forces in the context of security operations (see para. 5.6). In the light of the foregoing, the Committee considers that the author has submitted sufficient evidence providing strong indications of the direct involvement of agents of the State in Mr. Mendoza Berrospe's disappearance, and that the disappearance was followed by a refusal to acknowledge his deprivation of liberty or by the concealment of his fate or whereabouts, thus placing him outside the protection of the law, within the meaning of article 2 of the Convention. The Committee must then determine whether the State party has refuted that evidence and the allegation that the disappearance is attributable to it, by means of an investigation carried out with due diligence.

7.5 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 disappearance occurred.<sup>30</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>31</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>32</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>33</sup> Finally, the Committee recalls that the State party should take all measures necessary to investigate and punish any activity or intervention by any institution or agency aimed at hampering investigation and search processes.<sup>34</sup>

7.6 Regarding the investigation, the Committee notes the State party's argument that various institutions have contributed to a thorough, effective and impartial investigation into Mr. Mendoza Berrospe's disappearance with the aim of determining his fate or whereabouts and identifying those responsible so that they can be brought to justice (see para. 4.5). However, the Committee also notes the author's argument that the respective attorney general's offices failed to conduct the investigations without delay (see para. 5.7). In particular, the Committee notes that the inspection of Mr. Mendoza Berrospe's home ordered by the Veracruz Attorney General's Office took place almost a year and a half after the complaint was filed; that the eyewitness testimonies were collected between one and two years after the complaint was filed; that the statements of the Naval Police officers assigned to the patrols that were presumably involved were collected two to three years after the complaint was filed; and that the authorities failed to take various steps, such as requesting surveillance camera footage and patrol dispatch logs and identifying the patrols about which eyewitnesses had provided information (see para. 5.8). The Committee further notes that it was not until November 2020 that the federal Attorney General's Office adopted an investigation plan in relation to Mr. Mendoza Berrospe, and that it was only then that the authorities began to investigate the facts as an enforced disappearance – six years after the author filed the complaint in February 2014 (see paras. 5.3 and 6.5).

7.7 In the light of the foregoing, the Committee observes that the State party has not explained the delay in the investigations and search. In particular, the Committee notes that most of the substantive investigative measures mentioned by the State party date from 2019, some six years after Mr. Mendoza Berrospe's disappearance. Therefore, the Committee cannot consider that the authorities proceeded to undertake without delay a thorough and impartial investigation into Mr. Mendoza Berrospe's disappearance within the meaning of article 12 (1) of the Convention. The Committee concludes that the State party has failed to refute the evidence adduced by the author or the allegation that Mr. Mendoza Berrospe's disappearance is attributable to it, by means of an investigation carried out with due diligence (see para. 7.5). The Committee wishes to recall, on this occasion, that the investigation must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.<sup>35</sup> It cannot depend upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the State party.<sup>36</sup> The Committee therefore considers that Mr. Mendoza Berrospe's disappearance constituted an enforced disappearance within the meaning of article 2 of the Convention. In the light of the foregoing, the Committee concludes that the facts of the present case disclose a violation of article 1, read in conjunction with article 2, and of article 12 (1) of the Convention.

7.8 With regard to the search, the Committee takes note of the State party's argument that both the federal Attorney General's Office and the Fourth District Court of the State of Veracruz took steps to discover Mr. Mendoza Berrospe's whereabouts (see para. 4.6). In particular, it notes that the Court sent official letters to various authorities and requested them to submit reports, but was unable to establish that an investigative, police or military authority was responsible for Mr. Mendoza Berrospe's disappearance (see para. 4.6). The Committee also notes the State party's argument that Mr. Mendoza Berrospe's case has been analysed in accordance with the provisions on pattern-based searches of the Standardized Protocol for the Search for Missing and Disappeared Persons, which will allow for the formulation of hypotheses regarding Mr. Mendoza Berrospe's location and more efficient search strategies (see para. 4.7). Furthermore, the Committee notes the State party's argument that various developments occurred in 2022, including the drafting of a contextual analysis report, a search plan and a "search for living persons" work plan with a timetable (see paras. 4.8 and 4.9). The Committee takes note of the author's argument that the State party did not undertake search measures immediately and that, when it did, they were belated, routine, intermittent

and uncoordinated (see paras. 3.4 and 5.12). In particular, the Committee takes note of the author's argument that the competent Court never ordered thorough on-site inspections of the relevant places of detention, that it failed to apply a differential approach considering that Mr. Mendoza Berrospe was a minor and that it called off the search for him (see para. 5.10). The Committee further notes the author's claims that the state Attorney General's Office never adopted a search plan; that, despite the National Search Commission's having presented a search plan in February 2022, as at the date of submission of the author's comments, no action had been taken regarding the identified locations of interest; and that the activities carried out under the work plan of the State Search Commission were limited to the formal application of the Standardized Protocol for the Search for Missing and Disappeared Persons because the state Attorney General's Office did not have an investigation plan with a clear hypothesis to guide the search (see para. 5.11).

7.9 The Committee considers that the actions undertaken in the framework of the indirect *amparo* proceedings were inadequate for searching for and locating Mr. Mendoza Berrospe; that these actions should have included, as a minimum, going to the places where the victim might have been found in order to gather information directly;<sup>37</sup> and that under no circumstances may the proceedings be closed until the person is found.<sup>38</sup> The Committee also notes that, on 9 February 2016, it registered a request for urgent action in relation to the disappearance of Mr. Mendoza Berrospe and five other persons and that, in that connection, it asked the State party to, inter alia, conduct search activities in a manner similar to that outlined in paragraph 7.5. The Committee further notes that it was in relation to one of these urgent action requests that the Supreme Court of the State party recognized the binding nature of the recommendations adopted by the Committee in the context of the urgent action procedure under article 30 of the Convention, and urged the competent authorities to comply in full with the urgent action requests issued by the Committee, since they are unquestionably binding on the State.<sup>39</sup> Likewise, the Committee reiterates the Court's affirmation that the Committee's powers to issue and monitor urgent action requests are unquestionably part of the regulatory content of the Convention and must therefore be understood as being part of the provisions that Mexico accepts by signing, ratifying and incorporating it into its domestic legal system,<sup>40</sup> thus emphasizing the urgent obligation to search for disappeared persons using all available institutional resources and all the institutional coordination necessary to achieve this end.<sup>41</sup> However, the Committee notes that most of the substantive search measures mentioned by the State party date from 2021, almost eight years after Mr. Mendoza Berrospe's disappearance. In view of the above, the Committee considers that the State party cannot be deemed to have taken all appropriate measures to search for and locate him within the meaning of article 24 (3) of the Convention and concludes that the facts before it disclose a violation of the rights of Mr. Mendoza Berrospe and the author under that article.

7.10 Regarding the remaining allegations under article 24 of the Convention, the Committee notes the author's claims that she, as a family member, does not yet know the truth about the circumstances of Mr. Mendoza Berrospe's disappearance, that she has not received any form of reparation and that the State party has made no reference to the existence of such measures (see paras. 3.4 and 5.12). The Committee notes the State party's argument that there has been communication and follow-up with Mr. Mendoza Berrospe's family through their legal representative and that a meeting was held with the family members in March 2022 (see para. 4.9). The Committee also takes note of the State party's argument that current legislation provides for care, assistance, protection, comprehensive reparation and guarantees of non-repetition for victims (see para. 4.4).

7.11 In the present case, more than nine years after the facts, the author and Mexican society at large do not know the truth about what happened to Mr. Mendoza Berrospe. His family and Mexican society at large do not know the names of those responsible for the events and have not received timely or sufficient information about the circumstances of the disappearance. All the persons who were involved in the disappearance of Mr. Mendoza Berrospe are cloaked by impunity. In the light of the information set forth above regarding the investigation and the search for Mr. Mendoza Berrospe (see para. 7.7), the Committee considers that the State party has failed to take appropriate measures to fulfil the right of Mr. Mendoza Berrospe and the author to know the truth regarding the circumstances of his enforced disappearance, within the meaning of article 24 (2) of the Convention. In the absence of any claims by the State party regarding measures of reparation, the Committee considers that it cannot be understood that the legal system has guaranteed the victims' right to reparation and to prompt, fair and adequate compensation under article 24 (4), read in conjunction with article 24 (5), of the Convention. Accordingly, the Committee concludes

that the facts of the present case disclose a violation of the rights of Mr. Mendoza Berrospe and the author under article 24 (2) and article 24 (4), read in conjunction with article 24 (5), of the Convention.

8. The Committee, acting under article 31 (5) of the Convention, considers that the facts before it disclose a violation by the State party 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), with regard to Mr. Mendoza Berrospe; and of article 12 (1), article 24 (2) and (3), and article 24 (4), read in conjunction with article 24 (5), with regard to the author.

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

- (a) Ensure that a diligent and exhaustive search and investigation are conducted in relation to the enforced disappearance of Mr. Mendoza Berrospe, in which serious consideration is given to the hypothesis that officers from the police forces of the State of Veracruz were involved and the respective chains of command are investigated, ensuring full coordination among all the authorities involved and that an appropriate differential approach is applied;
- (b) Prosecute, try and punish the perpetrators and those responsible for the violations that have been committed, including the respective chains of command;
- (c) Grant the victims reparation and prompt, fair and adequate compensation, in accordance with article 24 (4) and (5) of the Convention;
- (d) Adopt all measures necessary to give effect to the guarantees of non-repetition laid down in article 24 (5) (d) of the Convention, in keeping with what is stipulated by the Committee in its report on the visit to the State party carried out under article 33 of the Convention.<sup>42</sup>

10. The Committee also urges the State party to make these Views public and disseminate them widely, in particular, though not solely, among the federal and state authorities concerned, including members of the security forces and judicial officials.

11. 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.

## ENDNOTES

- 1 In various case files, the judicial authorities use the names “Yonathan” and “Jonathan” interchangeably; however, according to the civil register, the victim is named “Yonathan”.
- 2 Investigation No. 1293/2013/I/VER-12, which was joined with Investigation No. 1269/2013/I/VER- 05 on 15 October 2015.
- 3 Veracruz Attorney General’s Office Decision No. 25/2011 establishing guidelines for immediate action in cases involving disappeared persons (*Gaceta Oficial*(the official gazette of the State of Veracruz) No. 219 of 19 July 2011).
- 4 A “detailed report” is the document in which the complaint is recorded and whereby the authority is notified of a possible criminal act; however, the authority does not conduct a formal investigation at this stage, as this step is taken only once a preliminary investigation has been opened in response to the notification, which then allows the authorities to follow the relevant investigative procedures.
- 5 No. AP/PGR/SDHPDS/UEBPD/M23/116/2014.
- 6 *Yrusta and Yrusta v. Argentina* (CED/C/10/D/1/2013), para. 10.4.
- 7 The author cites CED/C/CHL/CO/1, para. 19.
- 8 The author cites CED/C/PER/CO/1, para. 33 (a).
- 9 No. AP/PGR/SDHPDSC/UEBPD/M23/21/2014.
- 10 Arts. 27–29.
- 11 *Mora Márquez et al. v. Bolivarian Republic of Venezuela* (CCPR/C/128/D/3018/2017), para. 8.4; *Sarma et al. v. Sri Lanka* (CCPR/C/78/D/950/2000), para. 6.3; and *Padilla García et al. v. Mexico* (CCPR/C/126/D/2750/2016), para. 8.4.
- 12 Government of the State of Veracruz, State Search Commission, *Análisis de contexto de las desapariciones forzadas perpetradas en el puerto de Veracruz en diciembre de 2013. Caso Formando Hogar*(Contextual analysis of enforced disappearances perpetrated near the Port of Veracruz in December 2013: the Formando Hogar Case), July 2022, p. 72.
- 13 Inter-American Court of Human Rights, *Contreras et al. v. El Salvador*, Judgment of 31 August 2011, para. 145.
- 14 A/72/56, para. 78 (d).
- 15 CED/C/7, annex, principle 4, paras. 1 and 2.
- 16 *Ibid.*, principle 6, para. 2.
- 17 *Ibid.*, principle 6, para. 3.

- 18 Ibid., principle 7, para. 5.
- 19 *E.L.A. v. France*, para. 6.2.
- 20 See art. 8 (1) (b) of the Convention. See also Human Rights Committee, *Padilla García et al. v. Mexico*, para. 9.5; *Hidalgo Rea v. Mexico* (CCPR/C/131/D/3259/2018), para. 9.5; Working Group on Enforced or Involuntary Disappearances, general comment on enforced disappearance as a continuous crime (A/HRC/16/48), para. 39; and Inter-American Court of Human Rights, *Radilla-Pacheco v. Mexico*, Judgment of 23 November 2009, paras. 140 ff.
- 21 Human Rights Committee, *Hidalgo Rea v. Mexico*, para. 8.4.
- 22 *Yrusta and Yrusta v. Argentina*, para. 8.5. See also the Committee's rules of procedure (CED/C/1), rule 65 (3) (e).
- 23 *Yrusta and Yrusta v. Argentina*, paras. 8.5–8.7; and *E.L.A. v. France*, para. 6.5.
- 24 *Yrusta and Yrusta v. Argentina*, paras. 8.5–8.7; and *E.L.A. v. France*, para. 6.5.
- 25 See, *a contrario sensu*, *E.L.A. v. France*, para. 6.8.
- 26 *Yrusta and Yrusta v. Argentina*, para. 10.3.
- 27 Human Rights Committee, *Hidalgo Rea v. Mexico*, para. 9.2; *Padilla García et al. v. Mexico*, para. 9.3; *Bolakhe et al. v. Nepal* (CCPR/C/123/D/2658/2015), para. 7.4; and *Millis v. Algeria* (CCPR/C/122/D/2398/2014), para. 7.3.
- 28 Inter-American Court of Human Rights, *González et al. ("Cotton Field") v. Mexico*, Judgment of 16 November 2009, para. 179.
- 29 Human Rights Committee, *Hidalgo Rea v. Mexico*, para. 9.3; *Padilla García et al. v. Mexico*, para. 9.4; *Valdez Cantú et al. v. Mexico* (CCPR/C/127/D/2766/2016), para. 12.4; and Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, Judgment of 29 July 1988, paras. 115 and 147.
- 30 CED/C/19/2, para. 11.
- 31 Ibid., and CED/C/7, annex, principles 6–8.
- 32 CED/C/19/2, para. 11; and CED/C/7, annex, principles 10–12.
- 33 CED/C/19/2, para. 20; and CED/C/7, annex, principle 14.
- 34 CED/C/7, annex, principle 15.
- 35 Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, para. 177.
- 36 Ibid.
- 37 See CED/C/19/2; CED/C/MEX/VR/1 (Findings), para. 59; and A/72/56, para. 78 (d).
- 38 CED/C/7, annex, principle 7, para. 5.
- 39 Supreme Court, *Amparo* Appeal No. 1077/2019, judgment of 16 June 2021, para. 145.
- 40 Ibid, para. 122.
- 41 Ibid, para. 72.
- 42 CED/C/MEX/VR/1 (Findings), paras. 31–37.

## Anexo

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

1. He concurrido con mis colegas, el 24 de marzo de 2023, Día Internacional del Derecho a la Verdad, en la adopción de este dictamen. Considero que la ocasión es propicia para plantear unas reflexiones en torno al derecho a la verdad, cuestión que aún no ha sido suficientemente desarrollada en la jurisprudencia del Comité.
2. La Convención, cuya supervisión de cumplimiento se nos ha encomendado, es el primer tratado de derechos humanos en recoger de manera explícita el derecho a la verdad, en su artículo 24 (2), en los siguientes términos: “Cada víctima tiene el derecho de conocer la verdad sobre las circunstancias de la desaparición forzada, la evolución y resultados de la investigación y la suerte de la persona desaparecida”.
3. Pero el derecho a la verdad no surgió con la Convención. Su desarrollo ha transitado un largo camino desde la década de los 70, a través de su reconocimiento en instrumentos internacionales vinculantes y soft law <sup>1</sup>, y, como principio emergente de derecho internacional <sup>2</sup>, en pronunciamientos adoptados por órganos de supervisión de derechos humanos tanto a nivel regional como universal <sup>3</sup>.
4. Parte de tal desarrollo ha consistido en reconocer que el derecho a la verdad, más allá de una dimensión individual enfocada en la víctima particular, tiene una dimensión colectiva o pública relacionada con la sociedad en su conjunto.
5. En su informe sobre la cuestión de la impunidad de los autores de violaciones a derechos humanos, Louis Joinet planteó que “[...] el derecho de saber es también un derecho colectivo que tiene su origen en la historia para evitar que en el futuro las violaciones se reproduzcan”<sup>4</sup>.
6. Asimismo, la Comisión Interamericana de Derechos Humanos en su decisión sobre el caso Ella-curía y otros, estableció que: “El derecho a conocer la verdad con respecto a los hechos que dieron lugar a las graves violaciones de los derechos humanos [...] así como el derecho a conocer la identidad de quienes participaron en ellos, constituye una obligación que el Estado debe satisfacer respecto a los familiares de las víctimas y la sociedad en general”<sup>5</sup>.
7. En el apartado 7.11 de nuestra decisión, el Comité ha concluido que el Estado no tomó medidas adecuadas para hacer efectivo el derecho de las víctimas a la verdad, en los términos estipulados en el artículo 24 (2) de la Convención, 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”. Es decir, para arribar a su conclusión, el Comité ha tenido en cuenta no sólo la dimensión individual sino también la colectiva del derecho a la verdad.
8. Tal referencia en nuestro pronunciamiento es relevante y necesaria, pues en el estado actual de desarrollo del Derecho Internacional de los Derechos Humanos es indiscutible la existencia de un derecho colectivo de la sociedad a la verdad, tan trascendente como el de las víctimas. El Comité no podría mantenerse ajeno a dicha realidad.
9. La trascendencia de la dimensión colectiva del derecho a la verdad radica en el efecto preventivo que puede tener el conocimiento de las circunstancias y motivos de las violaciones de derechos humanos pasadas, a fin de evitar su recurrencia en el futuro, por el efecto disuasivo generado en posibles futuros perpetradores. Por ende, con la realización de este derecho no se busca una respuesta meramente simbólica a las graves violaciones de derechos humanos pasadas, a través de su público señalamiento, sino dar una lección que contribuya a la reconstrucción moral de la sociedad.



10. De otra parte, el conocimiento público de la verdad puede fomentar la empatía del colectivo social con las víctimas, quienes suelen enfrentar la negación o distorsión de los hechos. En este sentido, la condición de víctima, ante la falta de una verdad colectiva, puede convertirse en un estigma en el centro de las interacciones sociales que transmite una imagen deteriorada de las víctimas, a sí mismas y al resto de la sociedad, como personas que no merecen la atención del Estado o la compasión de los demás. Por eso, la revelación pública de la verdad, y con ella el reconocimiento del sufrimiento y la dignidad de las víctimas, pudiera aliviar los efectos traumáticos de las violaciones de los derechos humanos, restaurando en los afectados un sentido de pertenencia, realidad y seguridad, así como la confianza en las instituciones del Estado.

11. Además, la revelación pública de la verdad sobre graves violaciones a los derechos humanos, como la desaparición forzada de personas, contribuye a la construcción de una memoria colectiva, y con ello a una narrativa y reconocimiento sobre el pasado –unos recuerdos compartidos– que otorgue sustento a una identidad como pueblo en el presente. La preservación de esa memoria colectiva puede alentar a las nuevas generaciones a tomar medidas para no repetir su pasado y construir un mejor futuro, más justo y democrático.

12. Concluiré señalando que, para la mayoría de las víctimas, la revelación pública de la verdad y, con ello, la expresión de algún grado de remordimiento del Estado al reconocer lo ocurrido ante el resto de los ciudadanos, son condiciones esenciales para una verdadera reparación. Tal reparación entre otras cosas debe garantizar la no repetición y para ello debe fomentar la solidaridad: promover que los miembros de la sociedad no permanezcan ajenos a realidades tan dolorosas como la de Yonathan y Angélica, sino que alcen la voz y salgan a las calles a arriesgarse por el otro, a defenderlo, porque saben que mañana pudiera ocurrirles lo mismo a ellos. Eso sólo se puede lograr cuando la sociedad conoce la verdad.

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## ENDNOTES

- 1 Véase, por ejemplo, Artículos 32 y 33 del Protocolo I a los Convenios de Ginebra (1977); Principios 22.b y 24 de los Principios y directrices básicos sobre el derecho de las víctimas de violaciones manifiestas de las normas internacionales de derechos humanos y de violaciones graves del derecho internacional humanitario a interponer recursos y obtener reparaciones (A/RES/60/147), 16 de diciembre de 2005; y Principio 4 del Conjunto de principios actualizado para la protección y la promoción de los derechos humanos mediante la lucha contra la impunidad (E/CN.4/2005/102/Add.1), 8 de febrero de 2005.
- 2 Véase, Méndez, J. E. (2006) “The Human Right to Truth”, en T. A. Borer (Ed.), *Telling the Truths: Truth telling and peace building in post-conflict societies*(pp. 115-150).
- 3 Véase, por ejemplo, Comité de Derechos Humanos, *Quinteros et al. v. Uruguay* (CCPR/C/OP/2), p. 138, párr. 14; Corte IDH, *Caso Velásquez Rodríguez*, sentencia de 29 de julio de 1988, Serie C No. 4, párr. 181; Tribunal Europeo de Derechos Humanos, *El-Masri c. la ex-República Yugoslava de Macedonia*, 13 de diciembre de 2012, párr. 191; Asamblea Parlamentaria del Consejo de Europa, Resolución 2067, Personas desaparecidas durante el conflicto en Ucrania, 25 de junio de 2015, párr. 7.2; Directrices de la Comisión Africana de Derechos Humanos y de los Pueblos sobre la protección de todas las personas contra las desapariciones forzadas en África, 25 de octubre de 2022, Sección 3.7.
- 4 E/CN. 4/Sub. 2/1997/20/Rev.1, párr. 17. Véase también, Estudio sobre el derecho a la verdad, Informe de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (E/CN.4/2006/91).
- 5 CIDH. Informe 136/99 (fondo), caso 10.488, *Ignacio Ellacuría S. J. y otros c. El Salvador*, 22 de diciembre de 1999, párr. 221.