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Communication No. 2022/2011

Views adopted by the Committee at its 113th session (16 March-2 April 2015)

<i>Submitted by:</i>	Nura Hamulić and Halima Hodžić (represented by counsel, Track Impunity Always)
<i>Alleged victims:</i>	The authors and Husein Hamulić (son of Nura Hamulić and brother of Halima Hodžić)
<i>State party:</i>	Bosnia and Herzegovina
<i>Date of communication:</i>	18 November 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decisions, transmitted to the State party on 7 January 2011 (not issued in document form)
<i>Date of adoption of views:</i>	30 March 2015
<i>Subject matter:</i>	Enforced disappearance and effective remedy
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Right to life; prohibition of torture and other ill-treatment; liberty and security of person; right to be treated with humanity and dignity; recognition of legal personality; and right to an effective remedy
<i>Articles of the Covenant:</i>	2 (3), 6, 7, 9 and 16
<i>Articles of the Optional Protocol:</i>	2

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Annex

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political rights (113th session)

concerning

Communication No. 2022/2011*

Submitted by: Nura Hamulić and Halima Hodžić (represented by counsel, Track Impunity Always)

Alleged victims: The authors and Husein Hamulić (son of Nura Hamulić and brother of Halima Hodžić)

State party: Bosnia and Herzegovina

Date of communication: 18 November 2010 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 March 2015,

Having concluded its consideration of communication No. 2022/2011, submitted to it by Nura Hamulić and Halima Hodžić under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1. The authors of the communication are Nura Hamulić and Halima Hodžić, who submitted the communication on their own behalf and on behalf of Husein Hamulić, the son of Ms. Hamulić and the brother of Ms. Hodžić. The authors and Mr. Hamulić, who are all nationals of Bosnia and Herzegovina, were born on 14 April 1927, 15 March 1956 and 2 July 1968 respectively. The authors claim that the State party has violated Mr. Hamulić's rights under articles 6, 7, 9 and 16, read in conjunction with article 2 (3), of the Covenant. They also claim that the State party has violated their rights under article 7, read in

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabian Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. The text of the individual opinion of Committee member Anja Seibert-Fohr (concurring) and the separate opinion by Committee members Olivier de Frouville, Mauro Politi, Victor Manuel Rodríguez-Rescia and Fabián Omar Salvioli (partly dissenting) are appended to the present Views.

conjunction with article 2 (3), of the Covenant. The authors are represented by counsel. The Optional Protocol entered into force for the State party on 1 June 1995.

The facts as submitted by the authors

2.1 The events took place during the armed conflict between the Bosnian governmental forces on the one side and the Bosnian Serb forces and the National Yugoslav Army on the other that led to the independence of Bosnia and Herzegovina. The conflict was characterized by ethnic cleansing operations and other atrocities in which thousands of persons were killed, were taken to concentration camps or disappeared without trace.¹ Several of the disappearances occurred in Bosnian Krajina between May and August 1992, most prominently in the region of Prijedor, which includes the village of Hambarine.²

2.2 The authors used to live in the village of Hambarine. On 20 July 1992, members of the National Yugoslav Army and of paramilitary groups arrived in the village and surrounded the house of the Hamulić family. Ms. Hamulić, her husband, Ms. Hodžić, Husein Hamulić and another brother, Mustafa Hamulić, were present. Since soldiers apprehended Mustafa, Husein hid behind the family house and escaped into the woods surrounding Hambarine. Three persons, T.H., S.R. and I.H., who also hid in the woods, saw Husein alive for the last time. To avoid looking suspicious, he and the other three persons decided to split up. Husein's fate and whereabouts remain unknown. The authors claim that, at the time, the area was under the control of the National Yugoslav Army, and that Husein fell into the hands of the Army's members.

2.3 The authors remained in their house for over two weeks. Afterwards, they moved to the village of Travnik. Seven days later, Ms. Hodžić left with her children for Slovenia and then went to Finland. Ms. Hamulić and her husband remained for six months in Travnik. Ms. Hamulić's husband reported the disappearance of his sons, Mustafa and Husein, to the local chapter of the International Committee of the Red Cross (ICRC). Later, Ms. Hamulić and her husband joined Ms. Hodžić in Finland, where Ms. Hamulić and her husband also contacted ICRC concerning their sons' disappearance.

2.4 The armed conflict came to an end in December 1995, when the General Framework Agreement for Peace in Bosnia and Herzegovina entered into force.³

2.5 After returning to Hambarine on 1 September 2004, the authors and other members of their family filed an ante mortem questionnaire with regard to Husein and Mustafa before ICRC, the "Association of the Red Cross of Bosnia and Herzegovina" and the "Red Cross of the Federation of Bosnia and Herzegovina" and gave them DNA samples to facilitate the process of identifying the mortal remains exhumed by local forensic experts. Mustafa's mortal remains were located in a mass grave in Kevljani and exhumed in 2004. They were buried in the graveyard of Hambarine.

2.6 On 1 November 2007, the authors obtained a certificate by the Federal Commission on Missing Persons stating that Husein Hamulić had been registered as a missing person since 20 July 1992 and that this information was based on data derived from the

¹ The authors refer to the report submitted by member of the Working Group on Enforced or Involuntary Disappearances Manfred Nowak on the special process on missing persons in the territory of the former Yugoslavia (see E/CN.4/1996/36, paras. 22, 49-60, 67-68, 85 and 88).

² The authors refer to annexes I-V to the final report of the commission of experts established pursuant to Security Council resolution 780 (1992) (S/1994/674/Add.2 (vol. I)).

³ In accordance with the Agreement, Bosnia and Herzegovina consists of two entities: the Federation of Bosnia and Herzegovina and Republika Srpska. Brčko District was formally inaugurated on 8 March 2000 under the exclusive sovereignty of the State and international supervision.

perpetrators themselves, ICRC, prisoners and family members, among other sources. The authors claim that although the authorities were aware of Mr. Hamulić's disappearance and had access to relevant information, no ex officio, prompt, thorough, impartial, independent and effective investigation was carried out in order to locate him, to make known his fate and whereabouts and, should he have died, to locate, exhume, identify and return to his family his mortal remains.

2.7 On 19 November 2007, Ms. Hamulić requested from the Administrative Service of the Department for Veterans and Protection of the Disabled in Prijedor a disability pension pursuant to article 25 of the Law on the Protection of Civilian Victims of War and article 190 of the Law on Administrative Procedure, on the basis of the death of her son Mustafa and the disappearance of her other son Husein.

2.8 On 4 March 2008, Ms. Hamulić applied to the Human Rights Commission of the Constitutional Court of Bosnia and Herzegovina, claiming violation of articles 3 (prohibition of torture) and 8 (right to respect for private and family life) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as articles II.3 (b) and (f) of the Constitution of Bosnia and Herzegovina. The Constitutional Court decided to join together several applications submitted by relatives of missing persons, and therefore dealt with them as one collective case.

2.9 On 13 May 2008, the Constitutional Court adopted a decision in which it concluded that the applicants of the collective case were relieved from exhausting domestic remedies before ordinary courts, as "no specialized institution on enforced disappearance in Bosnia and Herzegovina seems to be operating effectively".⁴ The Court further found a violation of articles 3 and 8 of the European Convention, because of the lack of information on the fate of the disappeared relatives of the applicants, including the fate of Husein Hamulić. The Court ordered the Bosnian authorities concerned to provide "all accessible and available information on members of the applicants' families who went missing during the war, urgently and without further delay and no later than 30 days from the date of the receipt of the decision". The Court also ordered the authorities to ensure the operational functioning of the institutions established in accordance with the Law on Missing Persons, namely the Missing Persons Institute, the Fund for Support to the Families of Missing Persons in Bosnia and Herzegovina and the Central Records of Missing Persons in Bosnia and Herzegovina, immediately and without further delay, and no later than 30 days from the date of the court order. The competent authorities were requested to submit information within six months to the Constitutional Court about the measures taken to implement the decision.

2.10 The Constitutional Court did not adopt a decision on the issue of compensation, considering that it was covered by the provisions of the Law on Missing Persons concerning financial support and by the establishment of the Fund for Support to the Families of Missing Persons in Bosnia and Herzegovina. However, the authors argue that the dispositions on financial support have not been implemented and that the Fund has still not been established.

2.11 On 22 September 2008, to follow up on the Constitutional Court's decision, the Missing Persons Institute addressed a letter to Ms. Hamulić stating that her son had been reported as a missing person to the Institute and ICRC and that it was trying to find out his fate, in cooperation with the State Prosecutor's Office, the Ministry of the Interior and security agencies. The authors point out that the Institute did not provide any information

⁴ The authors refer to the Constitutional Court's judgements concerning *M.H. and others* (case No. AP-129/04), 27 May 2005, paras. 37-40, and *Fatima Hasić and others* (case No. AP 95/07), 29 May 2008.

on the actions and measures taken in order to ascertain Husein's fate and whereabouts and to prosecute and sanction those responsible for his disappearance.

2.12 The time limits set forth by the Constitutional Court in its decision expired and the relevant institutions did not provide any information on the fate and whereabouts of the victims, nor did they submit to the Court any information on the measures taken to implement its decision. The authors argue that although Ms. Hamulić wrote several times to different authorities, at the moment the communication was submitted to the Committee she had not received any further information from the Institute nor from any other authority involved in tracing activities and investigations on the fate and whereabouts of missing persons.

2.13 On 27 January 2009, the Administrative Service of the Department for Veterans and Protection of the Disabled in Prijedor granted Ms. Hamulić a monthly disability pension of 140 marks.⁵ The right to monthly pension was awarded starting on 1 October 2007. The authors claim that such pension is a form of social assistance and cannot replace the adoption of adequate measures of reparation for the serious human rights violations suffered by the authors and their relative.

2.14 On 18 August 2010, Ms. Hamulić applied to the Constitutional Court and requested it to proceed with the adoption of a ruling establishing that the authorities had failed to enforce its decision of 13 May 2008, pursuant to article 74.6 of its rules of procedure. Nevertheless, at the moment the communication was submitted to the Committee, she had not received any reply from the Court and no action had been carried out by the authorities.

2.15 As to the requirement under article 5 (2) (b) of the Optional Protocol, the authors hold that there was no effective remedy and that the Constitutional Court itself admitted that Ms. Hamulić and the other applicants "did not have at their disposal an effective and adequate remedy to protect their rights".⁶ In the light of article VI (4) of the State party's Constitution, the Constitutional Court's ruling of 13 May 2008 must be considered final and binding. Therefore, the authors do not have any other effective remedy to exhaust. With regard to Ms. Hodžić, the authors argue that although she did not formally file an application before Court, she accompanied her mother and supported her, undertaking all formal démarches on her mother's behalf; that her mother would not have been able to follow the proceedings without her support since she is illiterate; that she could not reasonably be requested to duplicate the proceedings already undergone by her mother; and that no effective remedy had been established by the Constitutional Court.

2.16 On the admissibility of the communication *ratione temporis*, the authors submit that, even though the events took place before the entry into force of the Optional Protocol for the State party, enforced disappearance is per se a continuing violation of several human rights⁷ that lasts and continues to be committed until the victim is located. In their case,

⁵ According to the authors, the sum is equivalent to 70 euros.

⁶ The authors refer to the Constitutional Court's ruling concerning case *M.H. and others* (see footnote 4), para 37.

⁷ The authors refer to the jurisprudence of international courts and bodies, as well as to article 14.2 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission at its fifty-third session and annexed to General Assembly resolution 56/83. See, inter alia, European Court of Human Rights, *Varnava and others v. Turkey*, Grand Chamber judgement of 18 September 2009, paras. 136-148; Inter-American Court of Human Rights, *Goiburú and others v. Paraguay*, judgement of 22 September 2006, series C No. 153; Inter-American Court of Human Rights, *Radilla Pacheco v. México*, judgement of 23 November 2009, series C No. 209, paras. 23-24; Working Group on Enforced or Involuntary Disappearances general comment No. 9 (2010) on enforced disappearance as a continuous crime; International Convention for the

domestic authorities, including the Constitutional Court, have qualified Husein Hamulić as a missing person. However, his fate and whereabouts have not yet been ascertained. Further, the authorities have not implemented the decision of the Constitutional Court of 13 May 2008 and the Office of the Prosecutor has not taken any measure to sanction those responsible for such failure.

The complaint

3.1 The authors maintain that Husein Hamulić was the victim of enforced disappearance by members of the National Yugoslav Army, that enforced disappearances comprise, by their nature, multiple offences, and that, in his case, it amounts to a violation of articles 6, 7, 9 and 16, read in conjunction with article 2 (3), of the Covenant. The authors point out that Husein's fate and whereabouts have remained unknown since 20 July 1992 and that his disappearance occurred within the context of a widespread and systematic attack directed against the civilian population. The fact that he was last seen alive in the woods of Hambarine, an area under the control of the National Yugoslav Army and paramilitary groups that were perpetrating acts of ethnic cleansing, makes it possible to conclude that he was placed in a situation of grave risk of suffering irreparable damages to his personal integrity and life.

3.2 In spite of their efforts, the authors have not received any relevant information about the causes and circumstances of Mr. Hamulić's disappearance. They note that although they reported his disappearance to institutions dealing with missing persons in the State party and although the authorities therefore had access to relevant information on his case, no ex officio, prompt, impartial, thorough and independent investigation has been carried out to find out his fate and whereabouts; that, should he have died, his mortal remains have not been located, exhumed, identified or returned to his loved ones; and that no one has been summoned, investigated or convicted for his enforced disappearance.

3.3 The State party is responsible for investigating all cases of enforced disappearance and for providing information on the whereabouts of missing persons. In this respect, the authors refer to a report of the Working Group on Enforced or Involuntary Disappearances in which it is stated that the primary responsibility for carrying out these tasks remains with the authorities under whose jurisdiction a suspected mass grave falls.⁸ The authors further argue that the State party has an obligation to conduct ex officio, prompt, impartial, thorough and independent investigations into gross human rights violations, such as enforced disappearances, acts of torture or arbitrary killings. The obligation to conduct an investigation also applies in cases of killings or other acts affecting the enjoyment of human rights that are not imputable to the State. In these cases, the obligation to investigate arises from the duty of the State to protect all individuals under its jurisdiction from acts committed by private persons or groups of persons that may impede the enjoyment of their human rights.⁹

Protection of all Persons against Enforced Disappearance, art. 8 (1); and communication No. 400/1990, *Mónaco de Gallicchio v. Argentina*, Views adopted on 3 April 1995, para. 10.4.

⁸ Nowak, report on the special process on missing persons in the territory of the former Yugoslavia (see footnote 1, para. 78).

⁹ See Human Rights Committee general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 8. See also Inter-American Court of Human Rights, *Chitay Nech and others v. Guatemala*, judgement of 25 May 2010, series C No. 212, para. 89; Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, judgement of 29 July 1988, series C No. 4, para. 172; European Court of Human Rights, *Demiray v. Turkey*, application No. 27308/95, judgement of 21 November 2000, para. 50; European Court of Human Rights, *Tanrikulu v. Turkey*, application No. 23763/94, judgement of 8 July 1999, para. 103; and

3.4 The authors refer to the Committee's jurisprudence according to which a State party has a primary duty to take appropriate measures to protect the life of a person.¹⁰ In cases of enforced disappearance, the State party has an obligation to investigate and bring perpetrators to justice. In the light of the circumstances of Mr. Hamulić's disappearance, the authors hold that the failure of the State party to conduct an effective and thorough investigation into the present case (see paras. 3.1 and 3.2 above) amounts to a violation of Mr. Hamulić's right to life, in breach of article 6, read in conjunction with article 2 (3), of the Covenant.

3.5 The authors further refer to the jurisprudence of the Committee according to which enforced disappearance constitutes, in itself, a form of torture,¹¹ and note that no investigation has yet been carried out by the State party in order to identify, prosecute, judge and sanction those responsible in the case under review. Therefore, Husein's disappearance amounts to treatment contrary to article 7, read in conjunction with article 2 (3), of the Covenant.

3.6 Mr. Hamulić's rights under article 9 of the Covenant were also violated. The circumstances of his disappearance (see para. 3.1 above) lead to reasonably presume that he was captured by members of the National Yugoslav Army. However, his detention was not entered into any official record or register and his relatives have never seen him again. He was never charged with a crime, nor was he brought before a judge or any other official authorized by law to exercise judicial power. He was unable to take proceedings before a court to challenge the lawfulness of his apprehension. As no explanation has been given by the State party and no efforts have been made to clarify his fate, the authors consider that the State party has violated his rights under article 9, read in conjunction with article 2 (3), of the Covenant.

3.7 The authors refer to the jurisprudence of the Committee, according to which enforced disappearance may constitute a refusal to recognize the victim before the law if that person was in the hands of the authorities of the State party when last seen and if the efforts of his or her relatives to obtain access to effective remedies have been systematically denied.¹² In the present case, the failure of the State party's authorities to conduct an investigation keeps Mr. Hamulić outside the protection of the law since July 1992. Consequently, the State party is responsible for a continuing violation of article 16, read in conjunction with article 2 (3), of the Covenant.

3.8 Mr. Hamulić's detention has not been acknowledged by the authorities, leaving him without access to an effective remedy. Despite their efforts, the authors have not received any relevant information about the causes and circumstances of the disappearance of their relative and no investigation has been carried out by the State party (see para. 3.2 above). Their efforts have been systematically frustrated. Moreover, the Constitutional Court has stated that there is no specialized institution able to conduct an effective and thorough investigation concerning persons who went missing during the armed conflict. Consequently, the authors claim that the State party has violated Mr. Hamulić's rights under articles 6, 7, 9 and 16, read in conjunction with article 2 (3), of the Covenant.

European Court of Human Rights, *Ergi v. Turkey*, application no. 23818/94, judgement of 28 July 1998, para. 82.

¹⁰ Communication No. 84/1981, *Dermitt Barbato v. Uruguay*, Views adopted on 21 October 1982, para. 10.

¹¹ Communications No. 449/1991, *Mojica v. Dominican Republic*, Views adopted on 10 August 1994, para. 5.7; No. 1327/2004, *Grioua v. Algeria*, Views adopted on 16 August 2007, para. 7.6; and No. 1495/2006, *Zohra Madoui v. Algeria*, Views adopted on 1 December 2008, para. 7.4.

¹² Communications No. 1495/2006, *Zohra Madoui v. Algeria*, Views adopted on 1 December 2008, para. 7.7; No. 1327/2004, *Grioua v. Algeria*, Views adopted on 16 August 2007, para. 7.9.

3.9 The authors further allege that they are themselves victims of a violation by the State party of article 7, read in conjunction with article 2 (3), of the Covenant. They were subjected to deep anguish and distress owing to their relative's enforced disappearance, as well as to the acts and omissions of the authorities in dealing with the issues for more than 20 years. Despite their efforts, their relative's fate and whereabouts remain unknown and his remains, should he have died, have not been returned to the family, fostering their ongoing anguish and frustration in not being able to give him a proper burial. They have addressed enquiries to various official authorities but have never received any plausible information. The authors point out that the authorities failed to implement the judgement of the Constitutional Court of 13 May 2008 and the Law on Missing Persons (in particular, those provisions concerning the establishment of the Fund) leaving families of missing persons without appropriate reparations. Against this background, the attitude of indifference of the State party's authorities to their requests amounts to inhuman treatment.

3.10 The authors request the Committee to recommend that the State party do the following: (a) order an independent investigation, to be carried out as a matter of urgency, concerning the fate and whereabouts of their relative and, should his death be confirmed, to locate, exhume, identify and respect his mortal remains and return them to the family; (b) bring the perpetrators before the competent civilian authorities for prosecution, judgement and sanction, and disseminate publicly the results of this measure; (c) ensure that the authors obtain integral reparation and prompt, fair and adequate compensation; and (d) ensure that the measures of reparation cover material and moral damage and measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition. In particular, they request that the State party acknowledge its international responsibility, on the occasion of a public ceremony, in their presence and in the presence of the authorities, that official apologies be issued to the authors and that the State party name a street or build a monument or a commemorative plate in Hambarine in memory of all the victims of enforced disappearance during the armed conflict and of the ethnic cleansing operations perpetrated in the village. The State party should also provide the authors with medical and psychological care immediately and free of charge, through its specialized institutions, and grant them access to free legal aid, where necessary, in order to ensure that they have available, effective and sufficient remedies. As a guarantee of non-repetition, the State party should establish as soon as possible educational programmes on international human rights law and international humanitarian law for all members of the army, the security forces and the judiciary.

State party's observations on admissibility and merits

4.1 By a note verbale dated 25 March 2011, the State party submitted its observations on admissibility and merits. It refers to the legal framework that has been established for the prosecution of perpetrators of war crimes in the post-war period since December 1995. It states that a national strategy for war crimes was adopted in December 2008, with the objective of finalizing the prosecution of perpetrators of the most complex war crimes within 7 years of the adoption of the strategy and of perpetrators of other war crimes within 15 years. The State party further refers to the adoption of the 2004 Law on Missing Persons, creating the Missing Persons Institute, with the aim of improving the process of tracing missing persons and identifying mortal remains. It recalls that, of the nearly 32,000 persons who went missing during the war, the remains of 23,000 persons have been found and 21,000 identified.

4.2 In April 2009, the Missing Persons Institute established a regional office in Istočno, Sarajevo, as well as a field office and organizational units in Sarajevo. The State party considers that those initiatives provide the conditions for faster and more efficient processes to search for disappeared persons in the territory of Bosnian Krajina, including Prijedor. Their investigators are on site every day to collect information on potential mass graves and

to establish contacts with witnesses. Since 1998, 721 graves have been exhumed and 48 other graves have been re-exhumed in this area, including in the municipality of Prijedor, where the body of Mr. Hamulić could perhaps be found. The State party further informs the Committee that when its observations were submitted the Institute had filed to the Office of the Prosecutor two requests for the exhumation of remains from a site in Hambarine-Copici.

4.3 The State party maintains that according to the municipality of Prijedor the authors had not submitted any request to it and that therefore it has no information concerning their case. Likewise, the Attorney of the Republika Srpska has no information related to this case.

Authors' comments on the State party's observations

5.1 The authors submitted their comments on the State party's observations on 12 May 2011. They refer to the general comment of the Working Group on Enforced or Involuntary Disappearances on enforced disappearance as a continuous crime and, in particular, to its paragraphs 1, 2, 7 and 8. They consider that the State party, in its observations, does not object to the admissibility of the communication and substantially acknowledges the merits of the allegations formulated therein. The authors further consider that those observations corroborate their allegation that Mr. Hamulić remains registered as an "unaccounted for" missing person and state that no match has been found through the online inquiry tool set up by the International Commission on Missing Persons. The tracing process is, therefore, still open and still under the responsibility of the Bosnian authorities, who are under the obligation to establish his fate and whereabouts; should Mr. Hamulić have died, to search for, locate, respect and return his remains to his family; to disclose to the latter the truth regarding the circumstances of his enforced disappearance and regarding the progress and results of the investigation into the fate of their loved one; and to guarantee them redress for the ongoing violations.

5.2 The authors state that, so far, none of them and none of the eyewitnesses of the events that led to the enforced disappearance of Mr. Hamulić have been contacted by personnel of the Missing Persons Institute regional office in Istočno or the field office in Sarajevo referred to by the State party, while they consider that they would be able to provide those authorities with information that could be relevant to locating him.¹³ They further point out that the State party, in its observations, provides general references to the existence of mass graves that lack precise information as to where their relative's remains could be located. Should the Institute have reliable information according to which the mortal remains of Mr. Hamulić could be located at the Hambarine-Copici site, the authors should be informed accordingly without delay and be involved in the whole process of locating, exhuming and identifying the remains.

5.3 The authors further argue that the high number of war crimes still requiring investigation does not relieve the State party from its responsibility to conduct a prompt, impartial, independent and thorough investigation into cases of gross human rights violations or from regularly informing relatives of the victims on the progress and results of those investigations. Although the enforced disappearance of Mr. Hamulić was promptly reported to various authorities, the authors have not been contacted or received any

¹³ The authors refer to the report on best practices in the matter of missing persons prepared by the drafting group of the Advisory Committee on missing persons (see A/HRC/AC/6/2, paras. 53, 56 and 80-97) and to the general comment of the Working Group on Enforced or Involuntary Disappearances on the right to the truth in relation to enforced disappearance, in particular, paragraph 4.

feedback. In this regard, the authors reiterate that relatives of victims of enforced disappearance should be closely involved in the investigations. In particular, they should be regularly given information on the process of the investigations and their results, and on whether trials might forthcoming.¹⁴

5.4 The authors consider that the implementation of the national strategy for war crimes has been deficient and cannot be used by the State party as a sufficient response concerning the lack of information on the progress and results of the investigations carried out, nor can it justify the inactivity of the authorities concerned. The authors further argue that the adoption of a transitional justice strategy cannot replace access to justice and redress for the victims of gross human rights violations and their relatives.

5.5 In the light of the State party's reference to the Law on Missing Persons, the authors reiterate that several years after its entry into force some of its crucial provisions, including those concerning the establishment of the Fund, have not been implemented. Furthermore, a number of international institutions have noted that the establishment of the Fund would not be enough to guarantee integral reparation to relatives of missing persons.¹⁵

State party's additional observations on admissibility and merits

6.1 On 4 July and on 11 and 17 August 2011, the State party submitted additional information and reiterated its observations, highlighting the efforts made to determine the fate and whereabouts of all missing persons in Bosnia and Herzegovina, including in the municipality of Prijedor. Its capacities, however, are still inadequate to dispose of all pending cases in a short period of time. The State party further stated that no relevant developments had occurred in the case of Mr. Hamulić. The Office of the Attorney General of Republika Srpska reported that the Prijedor Office of the Deputy Attorney General had not registered any case concerning his case and the authors' claims. Likewise, the Prosecutor Office of Bosnia and Herzegovina pointed out that its records of war crimes cases contained no case regarding Mr. Hamulić's disappearance. Nor was his name registered as victim.

6.2 As regards the argument of the authors that they have received no information about the status of the case of Mr. Hamulić, the State party notes that the Prosecutor's Office of Bosnia and Herzegovina set up a central database of all pending war crimes cases provided for in the national war crimes prosecution strategy.

6.3 The State party informs that the Law on Establishing and the Manner of Settling of Internal Debt of the Republika Srpska¹⁶ establishes courts' and other authorities' competence and regulates the proceedings for granting compensation for pecuniary and non-pecuniary damages in cases of disappeared persons. In addition, the government of the Republika Srpska has taken measures to accelerate the process of tracing missing persons.

6.4 By a letter dated 7 July 2011, the Missing Persons Institute reported that it was making efforts to trace missing persons in the territory of Bosnian Krajina and that it would

¹⁴ The authors refer to the general comment of the Working Group on Enforced or Involuntary Disappearances on the right to the truth in relation to enforced disappearance, para 3, and the report of the Working Group on its mission to Bosnia and Herzegovina (see A/HRC/16/48/Add.1, paras. 34 and 63-64).

¹⁵ The authors refer to the concluding observations on Bosnia and Herzegovina of the Committee against Torture (see CAT/C/BIH/CO/2-5, para.18) and the report of Working Group on its mission to Bosnia and Herzegovina (see A/HRC/16/48/Add.1, paras. 39-48).

¹⁶ Name of the Act as provided by the State party.

contact Mr. Hamulić's relatives in the future in order to provide further information on his case.

Additional information submitted by the authors

7.1 On 9 September 2011, the authors provided additional information to the Committee. The authors considered that the State party's further observations do not provide any substantive information concerning the admissibility and merits of their communication. Furthermore, its observations show that the State party's authorities do not have any relevant information that may contribute to clarifying Mr. Hamulić's fate and whereabouts or to provide meaningful indications with regard to the steps taken by them to fulfil the obligations contained in the Covenant. On the contrary, the authorities recognize the existence of serious shortcomings, for instance, in the process of identifying, investigating, judging and prosecuting those responsible for his disappearance.

7.2 The authors reiterate their comments as to the lack of implementation of the Law on Missing Persons, although it entered into force on 17 November 2004. As at the time of submitting the additional information to the Committee, the Fund had not yet been established.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether the case is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement and that the authors have exhausted all available domestic remedies.

8.3 The Committee notes that the State party has not challenged the admissibility of the communication and considers that the authors' allegations regarding violations of Mr. Hamulić's rights under articles 6, 7, 9 and 16, read in conjunction with article 2(3), as well as violations of the authors' rights under article 7, read in conjunction with article 2 (3), of the Covenant, have been sufficiently substantiated for the purposes of admissibility. The Committee therefore declares the communication admissible and proceeds to its examination on the merits.

Consideration of the merits

9.1 The Committee has considered the case in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

9.2 The Committee takes note of the authors' claims that on 20 July 1992 Mr. Hamulić escaped in the woods surrounding Hambarine, where he was last seen alive; that this area was under control of the National Yugoslav Army and paramilitary groups that were perpetrating acts of ethnic cleansing; that the disappearance occurred within the context of a widespread and systematic attack directed against the civilian population; and that, against this background, it is reasonable to presume that in July 1992 Mr. Hamulić was subjected to enforced disappearance by Army forces. No ex officio, prompt, impartial, thorough and independent investigation has been carried out by the State party to clarify Mr. Hamulić fate and whereabouts and to bring the perpetrators to justice. In this respect, the Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, according to which failure by a State party to

investigate allegations of violations and to bring to justice perpetrators of certain violations (notably torture and similar cruel, inhuman and degrading treatment, summary and arbitrary killings and enforced disappearances) could, in and of itself, give rise to a separate breach of the Covenant.

9.3 The authors do not allege that the State party was directly responsible for the enforced disappearance of their son and brother, respectively. Indeed, the authors allege that the disappearance was initiated in the State party's territory by forces of the National Yugoslav Army. The Committee observes that the term "enforced disappearance" may be used, in an extended sense, to refer to disappearances initiated by forces independent of or hostile to a State party, in addition to disappearances attributable to a State party.¹⁷ The Committee also notes that the State party does not contest the characterization of the events as an enforced disappearance.

9.4 The Committee notes the State party's information that it has made considerable efforts at the general level, in view of the more than 30,000 cases of enforced disappearance that occurred during the conflict. Notably, the Constitutional Court has established that the authorities are responsible for investigating the disappearance of the applicants' relatives, including Mr. Hamulić (see para. 2.9 above), and domestic mechanisms have been set up to deal with enforced disappearances and other war crimes cases (see para. 4.2 above).

9.5 Without prejudice to the continuing obligation of States parties to investigate all dimensions of an enforced disappearance, including bringing those responsible to justice, the Committee recognizes the particular difficulties that a State party may face in investigating crimes that may have been committed on its territory by the hostile forces of a foreign State. Therefore, while acknowledging the gravity of the disappearances and the suffering of the authors, because the fate or whereabouts of their missing son and brother has not yet been clarified and the culprits have not yet been brought to justice, the Committee considers that that in itself is not sufficient to find a breach of article 2 (3), of the Covenant in the particular circumstances of the present communication.

9.6 That being said, the authors claim that, at the time of the filing of their communication, more than 18 years after the alleged disappearance of their relative and more than 2 years after the judgement of the Constitutional Court of 13 May 2008, the investigative authorities had not contacted them for information regarding the disappearance of Mr. Hamulić. On 18 August 2010, the authors applied to the Constitutional Court and requested it to adopt a ruling establishing that the authorities had failed to enforce its decision of 13 May 2008. Nonetheless, the Constitutional Court has taken no decision and no action has been carried out by the authorities on Mr. Hamulić's case. The State party has provided general information on its efforts to find out the fate and whereabouts of missing persons and prosecute perpetrators. Nevertheless, it has failed to provide the authors or the Committee with specific and relevant information concerning the steps taken to establish Mr. Hamulić's fate and whereabouts, and to locate his mortal remains should he have died. The Committee further observes that the authorities have provided very limited and general information to the authors as to their relative's case. The Committee considers that authorities investigating enforced disappearances must give the

¹⁷ Compare article 7 (2) (i), of the Rome Statute of the International Criminal Court (defining enforced disappearance as including disappearances conducted by a political organization), with articles 2 and 3 of the International Convention for the Protection of All Persons from Enforced Disappearance (distinguishing between enforced disappearances conducted by States or by persons or groups acting with their authorization, support or acquiescence, and similar acts conducted by persons or groups acting without such authorization, support or acquiescence). See also communication No. 1956/2010, *Durić v. Bosnia and Herzegovina*, Views adopted on 16 July 2014, para. 9.3.

families a timely opportunity to contribute their knowledge to the investigation, and that information regarding the progress of the investigation must be made promptly accessible to the families. It also takes note of the anguish and distress caused to the authors by the continuing uncertainty resulting from the disappearance of their relative. The Committee concludes that the facts before it reveal a violation of articles 6, 7 and 9, read in conjunction with article 2 (3), of the Covenant with regard to Mr. Hamulić, and of article 7, read in conjunction with article 2 (3), of the Covenant, with regard to the authors.

9.7 In the light of the above findings, the Committee will not examine separately the authors' allegations under article 16, read in conjunction with article 2 (3), of the Covenant.¹⁸

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the State party has violated articles 6, 7 and 9, read in conjunction with article 2 (3), of the Covenant, with regard to Mr. Hamulić, and of article 7, read alone and in conjunction with article 2 (3), with regard to the authors.

11. In accordance with article 2 (3) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including (a) strengthening its investigations to establish the fate or whereabouts of Mr. Hamulić, as required by the Law on Missing Persons 2004, and having its investigators contact the authors as soon as possible to obtain information from them, so that they can contribute to the investigation; (b) strengthening its efforts to bring to justice those responsible for his disappearance, without unnecessary delay, as required by the national war crimes strategy; and (c) providing effective reparation to the authors, including adequate compensation and appropriate measures of satisfaction. The State party is also under an obligation to prevent similar violations in the future and must ensure, in particular, that investigations into allegations of enforced disappearance are accessible to the families of missing persons.

12. Bearing in mind that by becoming a party to the Optional Protocol the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated in the three official languages of the State party.

¹⁸ See *Selimović et al. v. Bosnia and Herzegovina*, para. 12.8.

Appendix I

Individual opinion of Committee member Anja Seibert-Fohr (concurring)

1. The main issue of this case is the extent to which Bosnia and Herzegovina incurred responsibility for insufficient remedies in response to an enforced disappearance that the authors of the communication do not attribute to the State party. The Committee has found a violation of articles 6, 7 and 9, read in conjunction with article 2 (3) of the Covenant, with regard to Husein Hamulić, and of article 7, read alone and in conjunction with article 2 (3), of the Covenant with regard to the authors. I concur with this conclusion, which is consistent with the Committee's earlier Views. I write separately to explain the legal reasons why the authors' additional claim under article 16, read in conjunction with article 2 (3), of the Covenant is not substantiated.

2. Pursuant to article 2 (3) (a), each State party undertakes to ensure that any person whose rights or freedoms are violated shall have an effective remedy. According to the Committee's long-established jurisprudence, article 2 (3) does not provide for an independent, free-standing right but can only be invoked by individuals in conjunction with other articles of the Covenant.^a It requires an arguable, well-founded claim of a violation of a substantive right.^b Therefore, the author of a communication claiming a violation of article 2 (3), read in conjunction with article 16, of the Covenant needs to substantiate a claim against the respective State party under article 16 or otherwise relate it to the State party.

3. In the present case, the authors asked the Committee to find that the State party had violated the obligation to provide an effective remedy for a violation of article 16 of the Covenant. They did not allege that the enforced disappearance of Mr. Hamulić was attributable to Bosnia and Herzegovina but rather to armed forces that opposed it. Without a further basis for connecting the State party to the disappearance, the authors have not substantiated their claims that the State party violated article 16, read in conjunction with article 2 (3) of the Covenant.

4. This issue is different from the claims under articles 6, 7 and 9. The right to life, the prohibition of torture, cruel, inhuman or degrading treatment or punishment and the right to liberty and security of person require positive measures of protection irrespective of whether the actual atrocity is connected to the State party. It is implicit in article 7 that States parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power.^c The nature of this obligation differs from that of article 16, which obliges States parties to guarantee the right to recognition as a person before the law. The fact that an enforced disappearance has occurred in the State's territory does not imply that the State party has violated article 16 when the disappearance is not attributable to it, nor does it

^a See *S.E. v. Argentina*, communication No. 275/88, para. 5.3.

^b See *Kazantzis v. Cyprus*, communication No. 972/2001, para. 6.6.

^c See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 8.

provide a sufficient basis for finding a violation of article 16, read in conjunction with article 2 (3), of the Covenant.^d

5. I would like to emphasize that this conclusion is fully in line with the legal qualification of Mr. Hamulić's disappearance. The Committee explains in paragraph 9.3 of its Views that the term "enforced disappearance" may be used, in an extended sense, to refer to disappearances initiated by forces independent of or hostile to the State party, in addition to disappearances attributable to the State party. It would be erroneous to conclude from this that any such disappearance automatically renders a State responsible for a violation of article 16, irrespective of attribution and without a further basis for connecting the State party to the disappearance. The fact that an atrocity inflicted upon a victim can be described as an enforced disappearance does not automatically render a State party responsible under article 16 or generate additional obligations to provide effective remedies under article 2 (3) of the Covenant.

6. For the reasons outlined above, I would have preferred to explain that the claim under article 16, read in conjunction with article 2 (3), is not substantiated. But I recognize that the Committee defensibly chose not to reach this issue in this and prior cases. At any rate, I would like to emphasize that the Committee was not motivated by considerations of judicial economy, nor did it ignore the very serious nature of enforced disappearance as one of the most heinous human rights violations and the need for the effective protection for victims of enforced disappearance and their families. It is in recognition of the imperative need to take effective measures to respond to any such crime committed in the territory of a State that the Committee found a violation of articles 6, 7 and 9, read in conjunction with article 2 (3), of the Covenant, with regard to Mr. Hamulić, and of article 7, read alone and in conjunction with article 2 (3), with regard to the authors. The Committee's holding therefore shows the highest respect for the suffering and most serious anguish imposed on Mr. Hamulić and his relatives.

7. As I have explained above, the Committee's conclusions, which focus on articles 6, 7 and 9, do not generally deny victims of enforced disappearance the protection of article 16, nor do the Committee's Views negate the significant value of the right to recognition as a person before the law. They are based on a careful analysis of the Covenant, in particular article 16, which considers the particularities of the case and gives due regard to the question of attribution. It is the role of the Committee to autonomously examine each communication on the basis of the Covenant and to determine whether the factual circumstances are appropriate for finding a violation of the Covenant by a State party rather than applying generalized notions or making routine findings on the basis of a notion that is not enshrined in the Covenant.^e On the basis of this understanding, the Committee has found a violation of the right to recognition as a person before the law in several other cases of enforced disappearance which were actually conducted by the respective State authorities and I am confident that it will continue to do so when such claims are substantiated.

^d See *Fatima Rizvanović and Ruvejda Rizvanović v. Bosnia and Herzegovina*, communication No. 1997/2010, appendix.

^e See *Tahar Mohamed Aboufaied v. Libya*, communication No. 1782/2008, appendix II.

Appendix II

Separate opinion of Committee members Olivier de Frouville, Mauro Politi, Victor Manuel Rodríguez-Rescia and Fabián Omar Salvioli (partly dissenting)

1. In paragraph 9.7 of its Views, the Committee decided not to examine separately the authors' allegations under article 16, read in conjunction with article 2 (3), of the Covenant. The Committee appears to be seeking to apply the principle of economy of means: "In the light of the above findings, the Committee will not examine separately". In other words, it considers that the substance of the authors' claims was already taken into account by the Committee in its review of the State party's compliance with articles 6, 7 and 9 of the Covenant, of which it was found to be in violation in paragraph 9.6. However, this is not what emerges from a reading of the authors' conclusions, who do not cite article 16 as a subsidiary argument but rather as an independent claim and who, moreover, by referring to the Committee's own jurisprudence in other cases of enforced disappearance, find a violation of article 16.^a Therefore, there were no grounds for applying the principle of economy of means.

2. However, it is the merits of the Committee's decision that seem to us open to criticism: on one hand, the Committee admits that the events in question fit the description of "enforced disappearance" (see para. 9.3) and, on the other, it considers that there was no need to rule on the alleged violation of article 16, read in conjunction with article 2 (3). However, in our view, the two claims cannot both be correct, as we believe that any enforced disappearance necessarily entails a violation of article 16.

3. Article 16 reaffirms the right of everyone to "recognition everywhere as a person before the law". The travaux préparatoires of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights make it possible to establish that the concept of "legal personality" covers not merely the capacity of individuals to act, which goes with the recognition of the right to conclude contracts and contractual responsibility, but rather the fact, for any person, of being recognized as a subject of rights and holder of individual rights and obligations.^b In this regard, article 16 is undoubtedly one of the most direct expressions of the principle of respect for the dignity of the human person in international human rights law: the very fact of being human entails the right to recognition of legal personality, independently of even the legal capacity accorded to the person (for example, infants have the right to legal personality even if they have a limited capacity that means that they do not enjoy all rights). However, as the Working Group on Enforced or Involuntary Disappearances has emphasized, enforced disappearance is a prime example of the violation of the right to

^a The authors cite communications No. 1495/2006, *Zohra Madoui v. Algeria*, 1 December 2008, para. 7.7, and No. 1327/2004, *Grioua v. Algeria*, 16 August 2007, para. 7.9.

^b Albert Verdoodt, "Naissance et signification de la Déclaration universelle des droits de l'homme" (Louvain-Paris, Société d'études morales, sociales et juridiques, Editions Nauwelaerts, 1964), pp. 108-111. Manfred Nowak, *United Nations Covenant on Civil and Political Rights: CCPR Commentary* (Kehl, N.P. Engel, 1993), pp. 282-283.

recognition of legal personality.^c In its first report, the Working Group considered that the practice of enforced disappearance violated this right, among others, and it has never changed its position (see E/CN.4/1435, para. 184). The Declaration on the Protection of All Persons from Enforced Disappearance recognizes this link, in article 1 (2): “Any act of enforced disappearance places the persons subjected thereto outside the protection of the law. ... It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law.”

4. It is true that, for some time, the Committee seemed unwilling to take this dimension into account. It was not until 2007 that it decided, concerning the conclusions of a claimant, to declare a violation of article 16 in connection with an enforced disappearance.^d The decision on this ground was followed two years later by the Inter-American Court of Human Rights in the case of *Anzualdo-Castro v. Peru*.^e It was to encourage and further this trend in case law that the Working Group decided in 2011 to adopt the general comment on the right to recognition as a person before the law in the context of enforced disappearances. In paragraphs 1 and 2 of the general comment, the Working Group draws a connection between the right to recognition as a person before the law and one of the constituent elements of enforced disappearance, i.e. the fact that the person is placed “outside the protection of the law”:

This means that not only the detention is denied, and/or the fate or the whereabouts of the person are concealed, but that while deprived of his/her liberty, this person is denied any right under the law, and is placed in a legal limbo, in a situation of total defencelessness.

Enforced disappearances entail the denial of the disappeared person’s legal existence and, as a consequence, prevent him or her from enjoying all other human rights and freedoms. The disappeared person may keep his or her name, at least when the birth has been registered (and except in cases when the true identity of children, who have been taken away from their parents, is falsified, concealed or destroyed), but he/she is not shown in the record of detainees; neither is the name kept in the registers of deaths. The disappeared is de facto deprived of his or her domicile. His/her properties become frozen in a legal limbo since no one, not even the next-of-kin, may dispose of that patrimony until the disappeared appears alive or is declared dead, that is a “non-person”.

5. Placing a person outside the protection of the law is the key element that differentiates an enforced disappearance from certain forms of deprivation of liberty, during which the right of a third person to obtain information on the detention is sometimes greatly restricted. Articles 18, 19 and 20 of the International Convention for the Protection of All Persons from Enforced Disappearance seek to clarify the rules governing this right to information on the part of third parties, thus setting out the outline of a kind of habeas data. In particular, article 20 (1) reads as follows:

Only where a person is under the protection of the law and the deprivation of liberty is subject to judicial control may the right to information referred to in article 18 be restricted, on an exceptional basis, where strictly necessary and where provided for by law, and if the transmission of the information would

^c General comment on the right to recognition as a person before the law in the context of enforced disappearances, para. 42.

^d Communications No. 1328/2004, *Kimouche v. Algeria* and No. 1327/2004, *Grioua v. Algeria*, 10 July 2007, paras. 7.8. and 7.9.

^e Inter-American Court of Human Rights, Series C, No. 202, judgement of 22 September 2009, paras. 90-91.

adversely affect the privacy or safety of the person, hinder a criminal investigation, or for other equivalent reasons in accordance with the law, and in conformity with applicable international law and with the objectives of this Convention. In no case shall there be restrictions on the right to information referred to in article 18 that could constitute conduct defined in article 2 or be in violation of article 17, paragraph 1.2. Without prejudice to consideration of the lawfulness of the deprivation of a person's liberty, States parties shall guarantee to the persons referred to in article 18, paragraph 1, the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in article 18, paragraph 1. This right to a remedy may not be suspended or restricted in any circumstances.

6. This is the Gordian knot of the Convention: how to reconcile the need in some cases to restrict access to information concerning a person deprived of liberty, and therefore to refuse to provide such information, and the imperative, nevertheless, of keeping the person under the protection of the law. This dilemma shows the essential nature of the constituent element of "placement of a person outside the protection of the law". A violation of article 20, i.e. the complete denial of the right to information, amounts in practice to denying the very existence of the disappeared as a legal person.

7. As a result, describing the deprivation of liberty as enforced disappearance is tantamount to saying that the person was removed from the protection of the law during this deprivation of liberty. From the outside, such a removal arises from the complete denial of the right to information on the deprivation of liberty, which most often takes the form of a denial of the deprivation of liberty or else, at the very least, "concealment of the fate or whereabouts of the disappeared person" (International Convention for the Protection of All Persons from Enforced Disappearances, art. 2).

8. With the denial or refusal to provide information, persons become, in reality, "non-persons", reduced to the status of an object at the hands of the authorities and deprived of legal personality, which is a characteristic feature of a violation of article 16 of the Covenant.

9. It seems to us therefore illogical that the Committee should state that the deprivation of liberty could be described as enforced disappearance and should refrain at the same time from finding a violation of article 16.

10. The fact that in this case the enforced disappearance is not attributed to the State party does not in any way change this conclusion. Of course, the allegation is that the disappearance is attributable to the "hostile forces of a foreign State" operating in the territory of the State party. However, what is at stake here is the failure of the State party to meet its procedural obligations under article 2. Enforced disappearance plays a catalytic role in the State party's responsibility, but such responsibility is incurred based on its failure to act by offering an effective remedy to the family members of the disappeared person. No doubt the wording adopted by the Committee in paragraph 10 of its Views might be misleading on this point, since it considers that the facts reveal a violation of articles 6, 7 and 9, read in conjunction with article 2 (3). In fact, it is article 2 (3), that is violated, in conjunction with all other articles violated by enforced disappearance (6, 7, 9 and 16). We believe that this is how the Committee should have formulated paragraph 10 of its Views.