



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2750/2016\*, \*\*

<i>Communication submitted by:</i>	María Eugenia Padilla García, Ricardo Ulises Téllez Padilla and María Eugenia Zaldívar Padilla, on their own behalf and on behalf of Christian Téllez Padilla, their missing son and brother (represented by i(dh)eas Litigio Estratégico en Derechos Humanos and the Mexican Commission for the Defence and Promotion of Human Rights)
<i>Alleged victims:</i>	The authors and Christian Téllez Padilla (son and brother of the authors)
<i>State party:</i>	Mexico
<i>Date of communication:</i>	10 November 2015
<i>Document references:</i>	Special Rapporteur's rule 92 decision, transmitted to the State party on 15 March 2016 (not issued in document form)
<i>Decision adopted on:</i>	15 July 2019
<i>Subject matter:</i>	Enforced disappearance
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to an effective remedy; right to life; prohibition of torture and cruel and inhuman treatment; right to liberty and security of person; recognition as a person before the law
<i>Articles of the Covenant:</i>	2 (3), 6 (1), 7, 9, 16
<i>Article of the Optional Protocol:</i>	5 (2) (b)

\* Adopted by the Committee at its 126th session (1–26 July 2019).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



1.1 The authors of the communication, which is dated 10 November 2015, are María Eugenia Padilla García, Ricardo Ulises Téllez Padilla and María Eugenia Zaldívar Padilla, Mexican citizens born on 5 November 1960, 1 May 1985 and 19 March 1989, respectively. The authors are acting on their own behalf and on behalf of Christian Téllez Padilla, their son and brother, also of Mexican nationality, born on 24 July 1980 and missing since 20 October 2010. The authors allege that the State party has violated Christian Téllez Padilla's rights under articles 6 (1), 7, 9 and 16 of the Covenant, read alone and in conjunction with article 2 (3). The authors also claim to be themselves victims of a violation by the State party of their rights under article 7 of the Covenant, read alone and in conjunction with article 2 (3). The authors also allege a violation of article 2 (3) of the Covenant. The Optional Protocol entered into force for the State party on 15 June 2002. The authors are represented by counsel.

1.2 On 17 November 2016, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, rejected the State party's request that the admissibility of the communication be considered separately from its merits.

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

#### *Disappearance of Christian Téllez Padilla*

2.1 On 20 October 2010, Christian Téllez Padilla (who was 30 years old and studying industrial engineering at the Universidad del Golfo de México, Campus Poza Rica, Veracruz, at the time) was driving his car through the city of Poza Rica, bound for an auto repair shop. His partner, Aidée Galindres Basave, was following him in her van. At approximately 3.30 p.m., where the Puente Hueleque crosses Boulevard Adolfo Ruiz Cortines, two patrol cars of the Poza Rica-Tihuatlán-Coatzintla inter-municipal police, manned by eight police officers, stopped Mr. Téllez Padilla and made him get out of his car and into a patrol car at gunpoint. The patrol cars left and one of the police officers took Mr. Téllez Padilla's car. His partner tried to follow them, but when the patrols stopped to ask her what she was looking for, two police officers arrived on motorcycles and parked in front of her, blocking her way.

2.2 Ms. Galindres went straight to the inter-municipal police station, where she was told that Mr. Téllez Padilla was not there. She then went to the Veracruz Investigation Agency and the Federal Investigation Agency, where she got the same answer. She went to the Veracruz State Attorney General's Office<sup>1</sup> to report the disappearance, but her complaint was not recorded because 48 hours had not passed since the disappearance. She then called the emergency telephone number to report the disappearance, and was told that she had to go back to the inter-municipal police station. When she got there, she was again informed that the person she was looking for was not there.

2.3 In the early hours of 21 October 2010, relatives of Mr. Téllez Padilla (his mother, brother and two uncles) arrived in Poza Rica from the Federal District. They went to the inter-municipal police station, where the deputy chief, Javier Amador Mercado Guerrero,<sup>2</sup> told them that there was no record of Mr. Téllez Padilla. Although the deputy chief allowed one of Mr. Téllez Padilla's uncles to enter the area where the detainees were held, he refused to open a padlocked door, despite the uncle's insistence.

#### *Complaints lodged over the disappearance of Christian Téllez Padilla*

2.4 On 21 October 2010, the Veracruz State Attorney General's Office finally admitted the complaint filed by the mother of Mr. Téllez Padilla, initiating preliminary investigation PZR4/495/2010. However, no action was taken to launch an urgent search for Mr. Téllez Padilla. In the afternoon of the same day, the family found Mr. Téllez Padilla's car in a vacant lot and informed the Attorney General's Office. The expert dispatched to the scene

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<sup>1</sup> *Procuraduría General de Justicia del Estado de Veracruz*, now *Fiscalía General del Estado de Veracruz*.

<sup>2</sup> The file shows that this person was later arrested for kidnapping and links with the organized crime group "Los Zetas".

touched the steering wheel of the car without wearing gloves and told the family that he could not take fingerprints because of the dust. As part of the investigation, Ms. Galindres was summoned on 26 October 2010 to work on facial composites of the police officers (the authors claim to have asked to see the photograph album of the inter-municipal police, to make it easier to identify those responsible).

2.5 On 22 October 2010, Ms. Galindres filed an application for *amparo* for illegal deprivation of liberty and incommunicado detention.<sup>3</sup> On 3 November 2010, after requesting information from the inter-municipal police and being told that Mr. Téllez Padilla had not been detained, the court ordered a stay of proceedings. After proceedings had been stayed for a year, the judge considered the lawsuit not to have been filed (in accordance with the law in force at the time of the events).

2.6 On 26 October 2010, in view of the perceived indifference of the authorities in Poza Rica, Mr. Téllez Padilla's family went to the Directorate-General of Judicial Investigations in Xalapa, the capital of Veracruz, where another preliminary investigation was opened.<sup>4</sup> In the context of this investigation, the family gained access to the photograph album of the inter-municipal police and Ms. Galindres identified Pablo García García (of whom a facial composite had been made) and two other police officers (Marco Alfredo Castellanos López and Carlos Vicencio Santiago) as being among those responsible for the disappearance.<sup>5</sup> In addition, and also in the context of this investigation, a number of people were questioned but claimed to have seen nothing in particular.<sup>6</sup> Family members were also informed that there were no surveillance cameras in the area (which turned out to be untrue, but due to the time that had elapsed, the video footage had been erased). On 29 November 2010, Pablo García García was summoned to testify. In his testimony of 6 December 2010, he stated that he belonged to the Canine Unit and did not drive patrol cars or motorcycles, and that he had been on holiday on the day of the events. He provided as evidence an official letter signed by the chief of the inter-municipal police (Juan Carlos Novoa Torres – who was linked to a murder in 2014) and the 20 October 2010 duty log of the Canine Unit, signed by the deputy chief of the inter-municipal police, Javier Amador Mercado Guerrero.

2.7 On 22 November 2010, a complaint was filed against the three police officers identified – Pablo García García, Marco Alfredo Castellanos López and Carlos Vicencio Santiago – in the Kidnapping Unit of the Office of the Assistant Attorney General for the Investigation of Organized Crime, in the Office of the Attorney General of the Republic, which gave rise to a preliminary investigation for the crime of illegal deprivation of liberty in the form of kidnapping.<sup>7</sup> The authors of the communication were very active,<sup>8</sup> contributing various pieces of evidence for the investigation, including the news of the arrest of the deputy chief of the inter-municipal police, Javier Amador Mercado Guerrero,<sup>9</sup> reputedly the leader in Poza Rica of the organized crime group Los Zetas. According to the

<sup>3</sup> Case No. 0809/2010 before the Eleventh District Court of Poza Rica, for violations of articles 14, 16 and 21 of the Constitution.

<sup>4</sup> Preliminary investigation 174E/2010.

<sup>5</sup> The photographs of four police officers (Leodagario Amador González, Marcelo López Hernández, Gregorio Maldonado Ramírez and Guillermo Gómez Castillo) who, in January 2015, were summoned to testify and declared that they did not know Mr. Téllez Padilla were missing.

<sup>6</sup> The authors claim that this was probably out of fear: a lady at the newspaper stand near the place where the police had asked Ms. Galindres what she was looking for, said that she had seen nothing, and two people – who refused to give their details – asked the family not to involve them. Moreover, the file also shows that some of the people questioned by the authorities said that they were “doing some repair work at home” and so were not aware of any situation involving patrol officers, or that they could not provide any information “because at the time mentioned this branch is closed”, or that they did not notice the presence of the inter-municipal police in their shop because they had their backs turned and could not see anything, or that they could not see anything because “the premises has air-conditioning and the door has to stay closed, and in any case the door is made of tinted glass”.

<sup>7</sup> Preliminary investigation PGR/SIEDO/UEIS/561/2010.

<sup>8</sup> Mr. Téllez Padilla's mother testified on 3 and 28 December 2010, 17 November 2011, 17 January, 27 June, 9 November and 10 December 2012, 5 February, 2 April, 22 May and 1 July 2013, offering, for example, colour photographs of her son and a blood sample for genetic-profiling purposes.

<sup>9</sup> The person who had denied family members access to a padlocked room in the police station.

authors, it was not until nine months later (on 22 October 2012) that his statement was taken, and that when he denied the accusations, there was no analysis of the collaboration between the inter-municipal police and the Los Zetas group.

2.8 On 24 October 2014, Mr. Téllez Padilla's family filed a new complaint with the Disappeared Persons Search Unit (established on 21 June 2013) at the Office of the Attorney General of the Republic. This gave rise to an official report,<sup>10</sup> for the purposes of which copies of all existing case files were requested. When the report was received on 16 April 2015, it was upgraded to a preliminary investigation. Although the call list for Mr. Téllez Padilla's telephone was examined and it was determined – in September 2015 – that a call had been made from his telephone a few minutes after his arrest and that on 6 December 2010 a call had been made to check the balance, it was impossible to obtain further information given the time that had elapsed.

2.9 As well as seeking judicial remedies, the authors filed complaints against the inter-municipal police with the Veracruz State Human Rights Commission (21 October 2010) and with the National Human Rights Commission (19 April 2011). None of the actions taken succeeded in establishing the whereabouts of Mr. Téllez Padilla.

2.10 The authors claim that the disappearance of Christian Téllez Padilla took place in a context of serious human rights violations with a clear link between state authorities and organized crime, citing reports from various international and regional bodies.<sup>11</sup> According to the authors, this link between the police and organized crime led to a rise in the number of extrajudicial executions and forced disappearances throughout the country, as well as in the number of complaints of inbuilt impunity for such acts; this situation was reflected in Veracruz, where it was influenced by the presence of organized crime groups such as Los Zetas, the Gulf Cartel and the New Generation Jalisco Cartel.

### The complaint

3.1 The authors maintain that the communication meets the admissibility criteria under the exception provided for in article 5 (2) (b) of the Optional Protocol, in that the appropriate remedies have been applied for but have been unreasonably prolonged and important evidence has been lost. The remedies have been ineffective in determining the circumstances of the disappearance and the fate and whereabouts of Mr. Téllez Padilla, and have not allowed those responsible to be punished.

3.2 In particular, the authors cite the Committee's jurisprudence that if remedies are unreasonably prolonged or proven to be ineffective, there is no obstacle to the consideration of a communication.<sup>12</sup> The authors also maintain that the communication is admissible on the basis of the four criteria developed by regional human rights systems to determine what counts as a reasonable period of time for the purpose of determining the effectiveness of remedies.<sup>13</sup> Regarding the complexity of the case, the authors maintain that the implication of the inter-municipal police made it impossible to make progress in the investigations. As for the procedural steps taken by the party concerned, the authors argue that they always cooperated in the investigation and that they were the ones who introduced evidence that

<sup>10</sup> Official report AC/PGR/SDHPDSC/UEBPD/M12/109/2014.

<sup>11</sup> The authors cite the 7 October 2015 statement of the United Nations High Commissioner for Human Rights on his visit to Mexico in 2015: "For a country that is not engaged in a conflict, the estimated figures are simply staggering ... Official statistics show that 98 percent of all crimes in Mexico remain unsolved, with the great majority of them never even properly investigated." They also mention the concerns expressed by the Committee on Enforced Disappearances, the United Nations Special Rapporteur on Torture and the Inter-American Commission on Human Rights after its visit in October 2015 (according to the Commission, the extent of enforced disappearance in the country was "alarming").

<sup>12</sup> The authors cite, for example, the case of *Pestaño v. Philippines* (CCPR/C/98/D/1619/2007).

<sup>13</sup> The authors refer to the case law of the European Court of Human Rights (*Ruiz-Mateos v. Spain*, application No. 12952/87, judgment of 23 June 1993, paras. 38 et seq.) and the Inter-American Court of Human Rights (*Genie-Lacayo v. Nicaragua*, merits, reparations and costs, judgment of 29 January 1997, Series C, No. 30, paras. 77 et seq.; *Argüelles et al. v. Argentina*, preliminary objections, merits and reparations, judgment of 20 November 2014, Series C, No. 288, para. 189).

opened new lines of investigation. As for the conduct of the judicial authorities, the authors maintain that those authorities obstructed and “vitiating” the investigation by: rejecting the complaint; contradicting themselves about the existence of security cameras; conducting a negligent expert appraisal of the car so that it was impossible to identify fingerprints; delaying the identification of the police officers – using a facial composite instead of showing the photograph album of the inter-municipal police, before eventually showing it with four photographs missing; taking 44 days to summon one of the police officers identified to testify; and giving full evidentiary value to the certificate produced by that police officer, even though it was signed by an officer who was later arrested on kidnapping charges. Finally, with regard to the last criterion – the effect of the legal situation on the persons involved – the authors point to the serious consequences for their personal integrity of not knowing the whereabouts of Mr. Téllez Padilla.

3.3 Turning to the violations in the present case, the authors assert that it concerns an enforced disappearance, since all the elements of the definition of that offence are met: (a) Mr. Téllez Padilla was stopped by inter-municipal police officers; (b) the officers made him get out of his car and into a police patrol car; and (c) his family tried very hard to find him and the officers denied that he was in the police station. The authors recall that the enforced disappearance of persons constitutes a multiple and continuing violation of several rights; they claim that the State party has violated Mr. Téllez Padilla’s rights under articles 6 (1), 7, 9 and 16 of the Covenant, read separately and in conjunction with article 2 (3) of the Covenant. The authors also claim to themselves be victims of a violation by the State party of their rights under article 7 of the Covenant, read alone and in conjunction with article 2 (3). They also allege a violation of article 2 (3) of the Covenant.

3.4 As for the violation of Mr. Téllez Padilla’s right to life, the authors allege that the acts constitute a violation of article 6 (1) of the Covenant, given the circumstances of Mr. Téllez Padilla’s detention by police officers and the absence of news on his fate or whereabouts.

3.5 As for the violation of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the authors maintain that there can be no doubt that Mr. Téllez Padilla suffered greatly from the terrible uncertainty and the harm to his physical and mental integrity, and that the forced disappearance of persons constitutes in itself a form of torture. Furthermore, the authors claim a violation of article 7 of the Covenant in respect of themselves, on account of the distress and suffering caused by their pursuit of justice, by not knowing the whereabouts of their relative and by not knowing whether he was alive or in what conditions he was held captive.

3.6 The authors also allege a violation of article 9 of the Covenant because Mr. Téllez Padilla was arrested without a warrant, was not informed of the reasons for his arrest, was not charged, and was given no chance to appear before a judicial authority in order to challenge the lawfulness of his detention. The authors also cite general comment No. 35 (2014) on liberty and security of person, in which the Committee recognizes “being involuntarily transported” (para. 5) as a form of deprivation of liberty, and states that “enforced disappearances ... constitute a particularly aggravated form of arbitrary detention” (para. 17). They also cite the jurisprudence of the Inter-American Court of Human Rights to support the claim of a violation of the right to liberty, because Mr. Téllez Padilla was transferred to an unknown place and his detention was not recorded.<sup>14</sup>

3.7 With regard to the violation of the right to recognition as a person before the law, the authors rely on the Committee’s Views to allege a violation of article 16 in respect of Mr.

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<sup>14</sup> The authors cite the jurisprudence of the Inter-American Court of Human Rights in the case of *Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*, merits, reparations and costs, judgment of 20 November 2012, Series C, No. 253, para. 200, according to which “the deprivation of liberty in legally recognized centers and the existence of records of detainees constitute fundamental safeguards, inter alia, against forced disappearance”.

Télez Padilla, who was removed from the protection of the law and was last seen in the hands of the authorities.<sup>15</sup>

3.8 Finally, owing to the failure to conduct an effective investigation, the authors also allege a violation of article 2 (3), read alone and in conjunction with articles 6 (1), 7, 9 and 16 of the Covenant. In this regard, the authors claim that the State failed to initiate an independent, impartial, serious, thorough and effective ex officio investigation that guaranteed the right to the truth and respected the family's right to participate in the proceedings (the authors point out that they even had to submit an application for *amparo* because of the enormous difficulties they faced in trying to obtain copies of the case files, and that international attention had already been drawn to this issue in the State party);<sup>16</sup> and that the authorities also obstructed and vitiated the investigation. In this regard, the authors invoke a number of international rulings that indicate that the period immediately following arrest is crucial to gathering information and thus preventing a disappearance.<sup>17</sup> Lastly, the authors recall paragraph 15 of general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, according to which "a failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant".

3.9 As reparation measures, the authors ask that the State party be ordered to: (a) conduct a prompt, impartial and thorough investigation into the facts; (b) continue the search to determine the whereabouts and fate of Mr. Télez Padilla, in accordance with the relevant international standards; (c) provide the authors with detailed information on the outcome of the criminal investigation and the search; (d) release Mr. Télez Padilla immediately if he is still in detention; (e) prosecute and punish those responsible; (f) grant the relatives and Mr. Télez Padilla, if he is still alive, full reparation, including adequate compensation and the necessary rehabilitation; and (g) take measures to prevent similar violations in the future.

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

4.1 On 13 May 2016, the State party requested the Committee to consider separately the admissibility and the merits and to declare the communication inadmissible for failure to exhaust domestic remedies as the case was still pending.

4.2 First, the State party submits that the necessary investigations were carried out in the cases before the authorities of the state of Veracruz. In this respect, the State party mentions that facial composites were made of two individuals; that Pablo García García was identified as one of those responsible and that he was summoned to appear as an accused person for the purposes of the proceedings; that the attorneys general of 30 states and the Federal District were requested to issue instructions to the appropriate authorities to conduct search operations; that they were also asked to report on whether there was any investigation concerning Mr. Télez Padilla under way and whether he was being held in a social rehabilitation centre or hospital; that they were also asked to post Mr. Télez Padilla's photograph on their website and other media; that psychological help was requested for Mr. Télez Padilla's partner and mother; that they were informed that the video footage taken by the cameras was automatically wiped after 15 days; that Ms. Galindres did not show up for appointments in 2012 and 2013 to identify the police officers; and that in 2015 a request was made to have the search included in the reward payment programme.

<sup>15</sup> The authors cite the cases of *Abdelhakim Wanis El Abani (El Ouerfeli) v. Libyan Arab Jamahiriya* (CCPR/C/99/D/1640/2007); *Fatma Zohra Berzig v. Algeria*, (CCPR/C/103/D/1781/2008); *Aïssa Mezine v. Algeria* (CCPR/C/106/D/1779/2008); and *Ram Kumar Bhandari v. Nepal* (CCPR/C/112/D/2031/2011).

<sup>16</sup> The authors cite the case before the Inter-American Court of Human Rights of *Radilla-Pacheco v. Mexico*, preliminary objections, merits, reparations and costs, judgment of 23 November 2009, Series C, No. 209, para. 258.

<sup>17</sup> The authors cite precautionary measure No. 453-13 granted by the Inter-American Commission on Human Rights in the matter of Daniel Ramos Alfaro regarding Mexico (20 February 2014, para. 11). They also cite Human Rights Watch, "Ni seguridad ni derechos: Ejecuciones, desapariciones y tortura en la guerra contra el narcotráfico en México" (Mexico, 2011, p. 10).

4.3 Secondly, the State party submits that the Office of the Attorney General of the Republic also carried out the necessary investigations. Thus, among other steps taken, statements were taken from various persons and acquaintances of Mr. Padilla Téllez; inspections were carried out at the scene of the events; searches were carried out in unmarked graves; 32 public prosecutor's offices, as well as hospitals and psychiatric units, were instructed to search for Mr. Téllez Padilla; the International Criminal Police Organization (INTERPOL) was asked to issue a Yellow Notice; the context was investigated; and a statement was taken from Javier Amador Mercado Guerrero, deputy chief of the inter-municipal police.<sup>18</sup>

4.4 The State party notes that, as a result of these actions, it has been established that there were several outbreaks of violence between criminal gangs in October 2010 in Poza Rica and that a number of press reports were critical of the actions of the inter-municipal police. However, the State party maintains that Pablo García García demonstrated "with an official document" that at the time of the events "he was enjoying his holiday", that "he did not know how to use or ride a motorcycle" and that "he does not have a scar like, or similar to, the one borne by the person riding the motorcycle who blocked the way, as described by the complainant".

4.5 In short, the State party argues that the preliminary investigations are under way, pending the submission of information by various prosecutor's offices in response to the request for cooperation. It claims that it has followed the search protocols, but that there is no compelling evidence to hold anyone responsible for the events. In this respect, "it may be presumed that the perpetrators of the criminal act may have been law enforcement officials, but it has not been conclusively demonstrated that any member of the inter-municipal police was involved". It concludes that "the Mexican State has done its utmost to establish the facts" and that the appropriate investigations and actions have been carried out, so that the State party has fulfilled its legal obligation to investigate with due diligence.

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

5.1 On 18 July 2016, the authors submitted their comments on the State party's observations on admissibility, in which they stressed that they had taken the necessary steps to exhaust the appropriate remedies but that these had not been effective. They maintained that the remedies had been unreasonably prolonged, and that the fate and whereabouts of Mr. Téllez Padilla remained unknown almost six years after his disappearance.

5.2 On the basis of article 12 (2) of the International Convention for the Protection of All Persons from Enforced Disappearance,<sup>19</sup> the authors argue that the initial refusal to receive the complaint was contrary to the obligation to initiate investigations immediately. In addition, the authors maintain that the authorities have not conducted a thorough investigation, so there is still no information on the whereabouts and fate of Mr. Téllez Padilla, those responsible have not been punished and no reparation has been made. In conclusion, they argue that the investigations have been carried out: (a) without due diligence; (b) very belatedly, leading to the loss of crucial evidence; and (c) with long breaks that reduced the effectiveness of several measures and led to unreasonable delays in the investigations.

5.3 Looking at the list of steps taken by the State party, the authors reiterate that actions that were necessary to achieve the objectives of the investigation were not carried out. One of them was to carry out a proper inspection of Mr. Téllez Padilla's vehicle in order to obtain the fingerprints and DNA of one of those responsible. Another was to issue an immediate court order granting access to the security cameras at the scene of the disappearance. In addition, Mr. Téllez Padilla's cellphone call list was accessed and analysed too late. Finally, the authors report that the statements of the other two police

<sup>18</sup> However, the State party does not indicate what the outcome of this procedure was.

<sup>19</sup> The relevant part of this article of the Convention, which was ratified by the State party on 18 March 2008, provides that: "Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities ... shall undertake an investigation, even if there has been no formal complaint."

officers singled out by the eyewitness were not collected until more than four years after the disappearance.

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

6.1 In its observations of 13 September 2016, the State party asked the Committee to find that it had not violated any of the articles of the Covenant.

6.2 The State party reiterates that the investigations were carried out promptly as soon as the authorities learned of the disappearance, on 21 October 2010. In this regard, the State party says that it was unaware of "evidence on which Ms. Galindres based her claim that she was not allowed to file a complaint on 20 October 2010". The State party also reiterates that the investigations were carried out with all due diligence and argues that the obligation to investigate is not an obligation of result, but of means, to be interpreted in such a way as not to impose a disproportionate burden on the authorities. The State party adds that the investigation was impartial, since the public prosecutor's office is by law independent of the inter-municipal police, and that it was thorough, since both state and federal authorities carried out all the necessary investigations and actions.

6.3 The State party again details all the steps taken and specifies that, as far as the examination of the car was concerned, "there was no sign whatsoever of the car having been used by anyone other than the alleged disappeared person". The State party also adds that a number of other officers,<sup>20</sup> in addition to the three police officers identified and the deputy chief of the inter-municipal police, Javier Amador Mercado Guerrero, came forward to testify and that their statements did not "suggest any probable link to the alleged events".

6.4 Thus, the State party maintains that the disappearance of Mr. Téllez Padilla cannot be attributed to State agents, "since no evidence has been produced in support of such a claim", and that, on the contrary, there is evidence pointing to different conclusions, such as the fact that none of the police officers admitted being involved and that none of the persons interviewed confirmed the facts. Thus, the State party argues that international responsibility cannot be attributed to it when it has produced evidence that discredits the authors' version.

6.5 Finally, the State party also maintains that it is not possible to claim that the disappearance resulted from an omission on its part. In this connection, it points out that a State cannot be held responsible for any situation of risk to the right to life if, at the time of the events, the authorities were not aware of the existence of a situation of real and immediate risk to the life of a given individual. The State party notes that it did not receive any warning that Mr. Téllez Padilla was at risk and it was therefore unable to prevent his disappearance.

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

7.1 In their comments of 20 January 2017, the authors state that the authorities did know about the disappearance from the very day it occurred, because Ms. Galindres called the police that same day on the emergency telephone number to report the disappearance of her partner after having asked about him in the offices of three state entities (the inter-municipal police, the Veracruz Investigation Agency and the Federal Investigation Agency). The authors say that the criminal case file contains a record of the call. In addition, the authors point out that there is a record in the case file of the refusal of the Veracruz State Attorney General's Office to accept the complaint on 20 October 2010.<sup>21</sup>

7.2 The authors also insist that, despite the consistent account of the eyewitness, the investigations were neither prompt nor thorough; they were not carried out with due diligence; and they involved the loss or alteration of substantial and irreplaceable evidence,

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<sup>20</sup> Gregorio Maldonado Ramírez, Marcelo López Hernández, Leodegario Amador Gonzáles, Juan Carlos Novoa Torres and Reyna Vite Chávez.

<sup>21</sup> Notably in the statement made to the Public Prosecution Service on 3 November 2010 by the mother of Mr. Téllez Padilla (annex 6: Statement by María Eugenia Padilla García to agent No. 8 of the Public Prosecution Investigative Service, p. 2).



which was needed to establish what happened and who was responsible. In this regard, the authors point out that the Working Group on Enforced or Involuntary Disappearances has recalled that “the first hours and days after the deprivation of liberty are when abuses usually occur, including enforced or involuntary disappearances”.<sup>22</sup> However, they say that no order was given to carry out an on-site investigation at the inter-municipal police station or to take steps to obtain information from the cameras located in the place where the vehicle was found; that the first visit to the place of detention took place on 27 October 2010, that is, seven days after the events; that the Public Prosecution Service official also received from the police the photographs of the police officers on 27 October 2010;<sup>23</sup> and that the first order to take a statement from Pablo García García was issued on 24 November 2010 (more than two months after the disappearance). Likewise, the authors indicate that on 26 October 2010 they submitted a request to find out whether there was a video recording in the archives of “C4” (Control, Command, Communications and Computing Centre), and that, when no answer had been received two months and 18 days later, they resubmitted the request, only to be told in January 2011 that “the video footage taken by the cameras is automatically wiped after 15 days”.<sup>24</sup>

7.3 As for the description of Pablo García García as one of the police officers riding a motorcycle, and the State party’s argument that he does not fit the description, the authors maintain that, although the officer’s lawyer stated that the physical description did not correspond exactly to the one given by the eyewitness, no steps were taken to clarify the differences and the witness was not asked to pick him out in a police line-up, as provided for in the Code of Criminal Procedure. Such a procedure would have been very pertinent, since when she viewed the photographs on 21 April 2014, the witness was very emphatic when she again identified Pablo García García as one of the police officers on a motorcycle who had blocked her way.<sup>25</sup>

7.4 The authors also insist that the delay is particularly serious if one takes into account the context in which the disappearance took place, indicating that it is clear from statements in the file that, at the time of the disappearance, there were clashes between the authorities and “Los Zetas”, and that “people were being kidnapped”.<sup>26</sup> In this regard, the authors regret that no steps were taken to establish the veracity of the evidence provided by Pablo García García to rule out his possible participation, despite the fact that one of the statements was signed by a person subsequently arrested for kidnappings and links with “Los Zetas”. The authors also regret that, despite their having provided a copy of the press report of an inter-municipal police operation that took place on the scene that same day, it was not until more than six years later (9 December 2016) that the Office of the Attorney-General of the Republic, during an inspection of the inter-municipal police station, took statements from police officers who acknowledged that the operation had indeed taken place.

7.5 The authors also argue that the State party has not denied that Mr. Téllez Padilla is missing; that – in accordance with the jurisprudence of both the European Court of Human Rights<sup>27</sup> and the Committee<sup>28</sup> – it has not provided any other version of events that

<sup>22</sup> A/HRC/33/51/Add.1, para. 54.

<sup>23</sup> Annex 7: Veracruz State Attorney General’s Office, Directorate-General of Judicial Investigations, Agency No. 8 of the Public Prosecution Investigative Service, Official letter DGIM/MP8o/2276/2010, Subject: Reply to official letter PGJ/VDH/3945/2010/-NVN, Xalapa-Enríquez, 25 November 2010, p. 3.

<sup>24</sup> Annex 23: Agent No. 15 of the Public Prosecution Service attached to the Directorate-General of Investigations in charge of the office of Agency No. 8. Xalapa-Enríquez, Veracruz, 14 January 2011.

<sup>25</sup> It is clear from annex 5 to the comments on the observations on the merits that the witness specified that the scar on the officer’s forehead that she had mentioned was “very small and [was] probably from untreated acne or a small cut”.

<sup>26</sup> Annex 9: Office of the Attorney General of the Republic, Office of the Assistant Attorney General for the Investigation of Organized Crime, Kidnapping Unit, AP PGR/SIEDO/UEIS/561/2010. Statement to the prosecution service by a university classmate, Mexico City, Federal District, 13 June 2014, p. 2.

<sup>27</sup> The authors refer to the case of *Aslakhanova and others v. Russia*, judgment of 18 December 2012, para. 104, in which the European Court of Human Rights held that, faced with testimonies reporting

satisfactorily and convincingly explains what happened; and that the refusal of inter-municipal police officers to acknowledge the detention of Mr. Téllez Padilla does not prove that he was not deprived of his liberty by agents of the State party since, precisely, one of the characteristic elements of enforced disappearance is the refusal to acknowledge the deprivation of liberty.

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

#### *Consideration of admissibility*

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

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

8.3 The Committee takes note of the State party's argument that domestic remedies have not been exhausted, since preliminary investigations are still pending before the Veracruz State Attorney General's Office and the Office of the Attorney General of the Republic. In particular, the State party submits that the authors have applied for the appropriate remedies but that several attorney general's offices have yet to provide information in response to requests for cooperation. The Committee also takes note of the authors' claims that domestic remedies have not been effective because their processing has been unreasonably prolonged, so that the fate and whereabouts of Mr. Téllez Padilla remain unknown.

8.4 The Committee recalls that the purpose of the requirement that domestic remedies be exhausted is to give the State party the opportunity to fulfil its duty to protect and guarantee the rights enshrined in the Covenant.<sup>29</sup> However, for the purposes of article 5 (2) (b) of the Optional Protocol, domestic remedies must not be unreasonably prolonged. In view of the fact that almost nine years have elapsed since the disappearance of Mr. Téllez Padilla and the submission of complaints by both the authors of the present communication and Mr. Téllez Padilla's partner, without any significant progress being made in those investigations and without any justification by the State party for the delay,<sup>30</sup> the Committee considers that those investigations have been unduly prolonged and that, consequently, article 5 (2) (b) of the Optional Protocol does not preclude it from considering the present complaint.<sup>31</sup>

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

#### *Consideration of the merits*

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

9.2 The Committee notes the authors' assertion that the facts in the present case constitute an enforced disappearance, since all the elements of the definition of that offence are present: (a) Mr. Téllez Padilla was stopped by inter-municipal police officers; (b) the

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enforced disappearance and the State's argument that the investigation had thrown up no evidence of disappearance at the hands of State agents, the State had failed to meet the burden of proof.

<sup>28</sup> Human Rights Committee, *Salem Saad Ali Bashasha v. Libyan Arab Jamahiriya* (CCPR/C/100/D/1776/2008), para. 7.2.

<sup>29</sup> Settled jurisprudence of the Committee since the adoption of its Views on *T.K. v. France* (CCPR/C/37/D/220/1987), para. 8.3.

<sup>30</sup> *Ekaterina Abdoellaevna v. The Netherlands* (CCPR/C/125/D/2498/2014), para. 6.3.

<sup>31</sup> *Vladimir Chernev v. Russian Federation* (CCPR/C/125/D/2322/2013), para. 11.3.

officers made him get out of his car and into a police patrol car; and (c) his family tried very hard to find him and the officers denied that he was in the police station. The Committee notes that the State party has not denied that Mr. Téllez Padilla is missing, and that it has stated that “it may be presumed that the perpetrators of the criminal act may have been law enforcement officials”, but concludes that the disappearance is not attributable to State agents because none of the police officers have admitted any involvement and there is no testimony to support that of the eyewitness.

9.3 The Committee observes that one of the characteristic elements of enforced disappearance of persons is precisely the refusal to acknowledge detention and to reveal the fate and whereabouts of the person,<sup>32</sup> and recalls its jurisprudence to the effect that the burden of proof cannot fall exclusively on the authors of the communication, since the author and the State party do not always have equal access to the evidence and the State party is often the only one with access to the relevant information.<sup>33</sup> Therefore, when the authors have submitted credible complaints to the State party and when further clarification depends on information that is solely in the hands of the State party, the Committee may consider the complaints substantiated if the State party does not produce satisfactory evidence or explanations to refute them.<sup>34</sup> The Committee also notes that “it is highly questionable to reject the testimony of witnesses ... based on the denial of the senior officers of the State entity where it is said that the disappeared person was detained” and that “it is neither logical nor reasonable to investigate a forced disappearance and subordinate its clarification to the acceptance or confession of the possible authors or authorities involved”;<sup>35</sup> rather, States must establish effective procedures for the thorough investigation of cases of enforced disappearance,<sup>36</sup> taking into account the characteristic elements of this type of offence, such as the refusal of the authorities to acknowledge detention.

9.4 Against the prevailing background of human rights violations – particularly enforced disappearances – taking place at the time and place of the events (see para. 2.10 and footnote 11 above), and in light of the consistent account of the events and the documentation submitted by the authors, the Committee considers that the State party has not provided an adequate and concrete explanation to refute the authors’ allegations concerning the alleged enforced disappearance of Mr. Téllez Padilla. Accordingly, the Committee considers that the acts in question in the present case constitute enforced disappearance.<sup>37</sup>

9.5 The Committee recalls that, while the Covenant does not explicitly use the term “enforced disappearance”, such disappearance constitutes a unique and integrated series of acts that represent a continuing violation of various rights recognized in the Covenant,<sup>38</sup> such as the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, and the right to recognition as a person before the law.<sup>39</sup>

9.6 In the present case, the Committee takes note of the authors’ claim that the acts constitute a violation of article 6 (1) of the Covenant, given the circumstances of Mr. Téllez Padilla’s detention by officers of the inter-municipal police and the absence of news on his

<sup>32</sup> General comment No. 36 (2918) on the right to life, para. 58.

<sup>33</sup> For example, *Gyan Devi Bolakhe et al. v. Nepal* (CCPR/C/123/D/2658/2015); *Arab Millis v. Algeria* (CCPR/C/122/D/2398/2014); *Sarita Devi Sharma et al. v. Nepal* (CCPR/C/122/D/2364/2014); and *Himal and Devi Sharma v. Nepal* (CCPR/C/122/D/2265/2013).

<sup>34</sup> *Gyan Devi Bolakhe et al. v. Nepal*, para. 7.4.

<sup>35</sup> Inter-American Court of Human Rights, *González Medina and family v. Dominican Republic*, Preliminary objections, merits, reparations and costs, judgment of 27 February 2012, Series C, No. 240, para. 161. See also general comment No. 36, para. 58.

<sup>36</sup> *Herrera Rubio et al. v. Colombia* (CCPR/C/31/D/161/1983), para. 10.3.

<sup>37</sup> Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>38</sup> *Gyan Devi Bolakhe et al. v. Nepal*, para. 7.7.

<sup>39</sup> Settled jurisprudence of the Committee since the case of *Sarma v. Sri Lanka* (CCPR/C/78/D/950/2000), para. 9.3, and general comment No. 36, para. 58.

fate or whereabouts. The Committee recalls that, in cases of enforced disappearance, deprivation of liberty followed by a refusal to acknowledge the deprivation of liberty, or by concealment of the fate of the disappeared person, removes the person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.<sup>40</sup> In the present case, the State party has not submitted any information indicating that it took any measures to preserve the life of Mr. Téllez Padilla when he was detained by the authorities, in violation of article 6 (1) of the Covenant.

9.7 The Committee also takes note of the authors' claim that the acts constitute treatment contrary to article 7 of the Covenant in respect of Mr. Téllez Padilla, because of the severe suffering, the uncertainty and the effect on his physical and psychological integrity as a result of the enforced disappearance. In the absence of any information from the State party on this point, the Committee considers that the facts as described constitute a violation of article 7 of the Covenant in respect of Mr. Téllez Padilla. The Committee also notes the authors' assertion that Mr. Téllez Padilla's disappearance and the pursuit of justice have caused them distress and suffering. The Committee considers that these facts reveal a violation of article 7 of the Covenant in respect of the authors of the communication.<sup>41</sup>

9.8 With regard to the alleged violation of article 9 of the Covenant, the Committee takes note of the authors' allegations that Mr. Téllez Padilla was arrested without a warrant and without being brought before a judicial authority, which would have enabled him to challenge the lawfulness of his deprivation of liberty. The Committee recalls its general comment No. 35, in which it observes that enforced disappearance constitutes a particularly aggravated form of arbitrary detention;<sup>42</sup> it recalls that article 17 of the International Convention for the Protection of All Persons from Enforced Disappearance provides that no one shall be held in secret detention and calls for the establishment of registers of persons deprived of their liberty as a fundamental safeguard against enforced disappearance; and it notes that the Inter-American Court of Human Rights has found that clandestine detention centres are per se a violation of the rights to personal liberty.<sup>43</sup> Since the State party has not provided any information in this regard, the Committee considers that due weight should be given to the authors' allegations and finds that the deprivation of liberty of Mr. Téllez Padilla was a violation of his rights under article 9 of the Covenant.

9.9 As for the authors' claim that Mr. Téllez Padilla was removed from the protection of the law and was last seen in the hands of the authorities, in violation of article 16 of the Covenant, the Committee recalls that the deliberate removal of a person from the protection of the law constitutes a denial of that person's right to recognition as a person before the law, particularly if his or her family's attempts to obtain effective remedies have been systematically obstructed.<sup>44</sup> In the present case, the Committee observes that the State party has not furnished any convincing explanation concerning the fate or whereabouts of Mr. Téllez Padilla, and that, when last seen, he was in the hands of the authorities. The

<sup>40</sup> *Gyan Devi Bolakhe et al. v. Nepal*, para. 7.8, and general comment No. 36, para. 58. See also Inter-American Court of Human Rights, *Velásquez-Rodríguez v. Honduras*, merits, judgment of 29 July 1988, Series C, No. 4: "The practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life ..." (para. 157), and "the context in which the disappearance ... occurred and the lack of knowledge seven years later about his fate create a reasonable presumption that he was killed" (para. 188).

<sup>41</sup> *Gyan Devi Bolakhe et al. v. Nepal* (CCPR/C/123/D/2658/2015), para. 7.16, and general comment No. 36, para. 58.

<sup>42</sup> General comment No. 35, para. 17, and general comment No. 36, para. 58.

<sup>43</sup> Settled jurisprudence of the Inter-American Court of Human Rights since the case of *Anzualdo Castro v. Peru*, preliminary objections, merits, reparations and costs, judgment of 22 September 2009, Series C, No. 202, para. 63.

<sup>44</sup> *Gyan Devi Bolakhe et al. v. Nepal*, para. 7.18, and also general comment No. 36, para. 58. See also the view of the Inter-American Court of Human Rights: "... disappearance is not only one of the most serious forms of placing the person outside the protection of the law but it also entails to deny that person's existence and to place him or her in a kind of limbo or uncertain legal situation before the society, the State and even the international community" (*Anzualdo Castro v. Peru*, para. 90).

Committee therefore finds that the enforced disappearance of Mr. Téllez Padilla removed him from the protection of the law and deprived him of his right to recognition as a person before the law, in violation of article 16 of the Covenant.

9.10 Lastly, the Committee takes note of the authors' claim that the facts also constitute a violation of article 2 (3) of the Covenant, which requires States parties to ensure that individuals have accessible, effective and enforceable remedies for asserting the rights recognized in the Covenant. The authors refer to the Committee's general comment No. 31, which states that failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. The Committee also notes the State party's assertion that its legal obligation to investigate has been discharged because the appropriate investigations have been conducted promptly, with due diligence, impartially and thoroughly. However, in the present case, the Committee notes that, despite the consistent account given by the eyewitness and the numerous actions undertaken by Mr. Téllez Padilla's family (see paras. 2.4–2.9 above), no significant progress has been made in the investigations and that, in particular, the appropriate procedures were not carried out in time, which led to the loss of important evidence (as a result of not requesting security camera footage of the scene of the incident in time, not requesting security camera footage at the location of the car, failing to order an on-site investigation at the inter-municipal police station, failing to analyse the call list for the disappeared person's telephone in time, not collecting fingerprints from Mr. Téllez Padilla's car, failing to summon the police officers identified to testify in a timely fashion, not ordering a police line-up and failing to investigate the context). The Committee also notes that domestic remedies have been unreasonably prolonged. Despite the admission by the inter-municipal police, during an inspection by the Office of the Attorney General of the Republic six years after the disappearance, that a police operation had indeed been carried out on the day of the disappearance, no progress has been made in the investigations. In view of the above, the Committee considers that the investigations carried out do not appear to have been prompt or thorough; that they were not carried out with due diligence; that they were not independent and impartial; and that they have been ineffective in clarifying the circumstances of Mr. Téllez Padilla's disappearance or his fate and whereabouts, and in identifying those responsible. The Committee recalls that article 2 (3) of the Covenant does not provide for an autonomous right.<sup>45</sup> Nevertheless, in view of the above, the Committee concludes that the facts before it reveal a violation of article 2 (3) of the Covenant, read in conjunction with articles 6, 7, 9 and 16, in respect of Mr. Téllez Padilla; and of article 2 (3) of the Covenant, read in conjunction with article 7, in respect of the authors of the communication.

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

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires that full reparation be made to individuals whose rights have been violated. In this regard, the State party should: (a) carry out a thorough, rigorous, impartial, independent and effective investigation into the circumstances of Mr. Téllez Padilla's disappearance, ensuring that the officials in charge of the search for Mr. Téllez Padilla and the investigation of his disappearance have the professionalism and autonomy needed to carry out their tasks, without ruling out the involvement of the inter-municipal police, bearing in mind the eyewitness statement and taking into account the context identified in the present case of a link between state authorities and organized crime groups; (b) immediately release Mr. Téllez Padilla if he is still being held incommunicado; (c) if Mr. Téllez Padilla has died, hand over his remains to his family; (d) investigate and sanction any type of action that might have hindered the

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<sup>45</sup> Settled jurisprudence of the Committee since the case of *S.E. v. Argentina* (CCPR/C/38/D/275/1988), para. 5.3.

effectiveness of the search and tracking process; (e) provide the authors with detailed information on the outcome of the investigation; (f) prosecute and punish the persons found responsible for the violations committed and make the results of those proceedings public; (g) ensure that adequate psychological rehabilitation and medical treatment are available to the authors, as needed; and (h) grant the authors, as well as Mr. Téllez Padilla if he is still alive, full reparation, including adequate compensation for the violations suffered. The State party is also under an obligation to take steps to prevent the occurrence of similar violations in the future.

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

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