



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. 3018/2017*, **, ***

<i>Communication submitted by:</i>	Simón Mora Carrero and Alcedo Guaicamacuto Mora Carrero, on their own behalf and on behalf of their missing father, Alcedo Mora Márquez (represented by the Venezuelan Programme for Education and Action on Human Rights (PROVEA))
<i>Alleged victims:</i>	The authors and Alcedo Mora Márquez
<i>State party:</i>	Bolivarian Republic of Venezuela
<i>Date of communication:</i>	28 June 2016
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 28 August 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	11 March 2020
<i>Subject matter:</i>	Disappearance
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to an effective remedy; right to life; prohibition of torture and cruel and inhuman treatment; right to liberty and security of person; right of persons deprived of their liberty to be treated with humanity; recognition as a person before the law
<i>Articles of the Covenant:</i>	2 (3), 6 (1), 7, 9, 10, 16
<i>Articles of the Optional Protocol:</i>	5 (2) (b)

1. The authors of the communication, dated 28 June 2016, are Simón Mora Carrero and Alcedo Guaicamacuto Mora Carrero, who are brothers. Both are Venezuelan nationals and of legal age. The authors are acting on their own behalf and on behalf of Alcedo Mora

* Adopted by the Committee at its 128th session (2–27 March 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumaza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

*** Two individual opinions by three Committee members (dissenting) are annexed to the present Views.



Márquez, their father, also a Venezuelan national, who was born on 11 September 1960 and disappeared on 27 February 2015. The authors allege that the State party has violated Mr. Mora Márquez's rights under articles 2 (3), 6 (1), 7, 9, 10 and 16 of the Covenant. The authors further allege that the State party has violated their own rights under articles 2 (3) and 7 of the Covenant. The authors are represented by counsel. The Optional Protocol entered into force for the State party on 10 August 1978.

The facts as submitted by the authors

2.1 The authors allege that enforced disappearances have been a practice in the State party since the 1960s as part of anti-subversive efforts. Since the 1980s, the practice of enforced disappearance has changed and become linked to the fight against ordinary crime. The authors state that 122 cases of enforced disappearance were recorded between 2000 and 2015. However, the authors allege that the enforced disappearance of Mr. Mora Márquez is not linked to the fight against ordinary crime, but rather that his disappearance marks a return to a repressive practice of politically motivated enforced disappearance.

2.2 Mr. Mora Márquez was a well-known regional leader of the Venezuelan Revolutionary Party who had aired his political views on programmes broadcast on Radio Horizonte, Radio Zamora and Radio Los Andes 1040, denouncing acts of corruption, criticizing government policies and urging the population to organize in defence of their rights.

2.3 Since August 2013, Mr. Mora Márquez had worked for the government of the State of Mérida, in the Andes region in the western part of the country, as Secretary to the Secretary-General of the government. Mr. Mora Márquez had denounced several state government officials and personnel of the State-owned company *Petróleos de Venezuela* for involvement in a network that was smuggling gasoline into Colombia. In that context, he had provided the Governor and the Secretary-General of the government of the State of Mérida with a dossier containing information on the individuals involved in the smuggling operation.

2.4 On 25 February 2015, Mr. Mora Márquez was intercepted near his home by armed men, who arrived in a black pickup truck and threatened him with death. The authors indicate that the Bolivarian National Intelligence Service used vehicles with similar characteristics. Mr. Mora Márquez did not lodge a formal complaint concerning the threats made against him, but he did tell family and friends about them. That same day, at 7.41 p.m., Mr. Mora Márquez sent a text message from his mobile phone to several people, stating the following: "Comrades, be warned, the Bolivarian National Intelligence Service has issued a warrant for my arrest. [...] they want to charge me for some allegations of corruption [...] that I've been making and they are trying to set me up.¹ Beware."

2.5 On the morning of 27 February 2015, Mr. Mora Márquez left his home for work; that was the last time his children saw him alive.

2.6 On 2 March 2015, the authors were able to talk to their father by telephone for a minute and a half and were told by Mr. Mora Márquez that "everything was fine". The authors tried repeatedly to communicate with their father after that, but to no avail.

2.7 On 4 March 2015, Mr. Mora Carrero received several text messages on his mobile phone from his father's mobile, indicating the following: "Working hard, knee to the earth, as our immortal *comandante* taught us. AMM"; "I'm fine, will tell you more later. AMM"; "I'm in a meeting with some comrades. AMM". The authors indicate that these messages aroused greater alarm, as they did not read like something their father would have written; moreover, their father did not usually put his initials at the end of his messages.

2.8 On 5 March 2015, the authors filed a complaint of enforced disappearance with the Agency for Forensic and Criminal Investigations of Mérida, which was registered under the number K-15-0262-00618.

2.9 On 13 March 2015, the authors submitted a 23-page file on their father's disappearance to the National Assembly, and on 25 May 2015, they requested the National Assembly's Committee on Internal Policy to use its good offices to follow up on the matter.

¹ In other words, they were trying to falsely implicate him.

2.10 On 27 April 2015, the authors also filed a complaint with the Office of the Ombudsman, in which they indicated that their father's allegations of corruption had given rise to disagreements between him and his boss. In that connection, the authors indicate that, a few days before his disappearance, their father's boss called him to tell him that the Governor had received a call from the Bolivarian National Intelligence Service informing him that the Service had a warrant for the arrest of Mr. Mora Márquez for alleged links to a kidnapping. The authors claim that this was a scare tactic by the boss, as no such arrest warrant ever existed.

2.11 On 13 May 2015, the authors submitted an application for *amparo* to State and Municipal Court of First Instance No. 6 of the Mérida State Criminal Court Circuit. The judge requested information from the Bolivarian National Intelligence Service, the alleged responsible party according to the authors, and from the Mérida office of the Agency for Forensic and Criminal Investigations. Both bodies replied that they had not detained Mr. Mora Márquez. On 18 May 2015, the judge nevertheless decided to allow the case to go forward and ordered the Attorney General's Office "to take all necessary steps to locate or bring about the appearance of the injured party, and to charge and prosecute the person or persons responsible, if applicable, in accordance with articles 26, 27, 49, 51 and 55 of the Constitution of the Bolivarian Republic of Venezuela and in compliance with the binding judgments issued by the Constitutional Chamber of the Supreme Court of Justice concerning the writ of habeas corpus". The Court's decision, which declared the application for *amparo* admissible, was submitted in mandatory consultation with the Criminal Court of Appeals of the Mérida State Criminal Court Circuit, which, on 10 June 2015, decided to keep the action for *amparo* active until such time as Mr. Mora Márquez reappears, dead or alive.

2.12 On 18 May 2015, through a public statement published in a regional newspaper, the Governor of the State of Mérida reported the disappearance of Mr. Mora Márquez: "I must publicly express to the Mérida community, Mr. Mora's family and all revolutionary comrades my concern about the disappearance of Alcedo Mora, and through this communiqué I make a fervent plea for his prompt appearance".²

2.13 The authors state that, in the same week that their father disappeared, two of their friends, brothers of Colombian nationality who had applied for asylum in the Bolivarian Republic of Venezuela, also disappeared. The two brothers had been followed by a truck with identical characteristics to the one observed near Mr. Mora Márquez's home, from which a number of men had got out and threatened him (see para. 2.4 above).

2.14 The authors also state that it is clear from a report submitted by the mobile telephone company that, on 1 March 2015, Mr. Mora Márquez had several telephone conversations, one of which was with a friend whom he told he was very tired and was walking along a path. Messages were also sent from his mobile phone until 4 March 2015.³

2.15 Finally, the authors allege that they met with the Secretary-General of the government of the State of Mérida, who told them "this happened to your father because he was talking a lot of nonsense".⁴

The complaint

3.1 The authors argue that the communication is admissible, as they have exhausted domestic remedies. In particular, while they note that the investigations carried out by the Public Prosecutor's Office progressed at a good pace in the first few months, and that a number of actions were taken to investigate the enforced disappearance of their father, such as requesting information from several telephone companies on calls made and received, and

² The public statement, which is attached to the communication, also says the following: "I stand in solidarity with and echo the continuous calls of his relatives, friends and fellow comrades [...]. In solidarity with all his relatives and as the regional government, we make an urgent public appeal to all persons, institutions and organizations to take part in the immediate search and to find comrade Alcedo Mora, safe and sound. In my capacity as the highest authority of the State, I shall continue to monitor the course of the investigations".

³ The communication does not provide any further details.

⁴ The communication does not indicate the date of this meeting, nor does it provide information on any complaints that the authors might have made about the matter or against the government of the State of Mérida.

summoning a number of people close to the disappeared person to give evidence, the authors also conclude that the Public Prosecutor's Office did not take other important steps, such as calling other witnesses to give evidence, requesting that other telephones be traced, carrying out field visits or identifying the suspicious pickup. They therefore consider that, having failed to yield any results, the investigation has not been effective.

3.2 The authors contend that Mr. Mora Márquez was a victim of enforced disappearance. They note that the Declaration on the Protection of All Persons from Enforced Disappearance states that any act of disappearance constitutes a violation of the rules of international law guaranteeing the right to liberty and security of the person; the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment; the right to recognition as a person before the law; and the right to life. The authors also recall that the Committee has repeatedly stressed the multifarious nature of enforced disappearance and has pointed out that it constitutes a violation of numerous rights enshrined in the Covenant.⁵ The authors conclude that the State party has violated articles 2 (3), 6 (1), 7, 9, 10 and 16 of the Covenant in respect of Mr. Mora Márquez.

3.3 The authors also claim that their own rights under articles 2 (3), and 7 of the Covenant have been violated because of the cruel and inhuman treatment they have suffered as a result of the continuing uncertainty about the fate and whereabouts of their loved one. In this regard, the authors recall that the Committee has clearly recognized that enforced disappearance constitutes a form of cruel and inhuman treatment for the relatives of the disappeared person.⁶

3.4 The authors request that all appropriate measures be taken and that all possible efforts be made to ascertain the circumstances surrounding the disappearance of Mr. Mora Márquez; that he be produced alive or, if that is not possible, that his remains be handed over to them; that those responsible be punished; and that measures be taken to prevent any recurrence of similar events.

State party's observations on admissibility

4.1 On 27 October 2017, the State party requested the Committee to declare the communication inadmissible for failure to exhaust domestic remedies, in accordance with article 5 (2) (b), of the Optional Protocol. In that regard, the State party refers to the Committee's decisions affirming that note should be taken of States parties' arguments regarding respect for the conditions of admissibility relating to non-exhaustion of domestic remedies.⁷

4.2 In particular, the State party points out that, on 12 March 2015, the Public Prosecutor's Office issued an order to open a criminal investigation and that, since then, the Public Prosecutor's Office has conducted more than 45 investigative procedures aimed at locating the alleged disappeared person. The State party indicates that the most recent such action was taken on 4 August 2017, when a search was conducted with a view to finding a match between the genetic profile of the disappeared person and some skeletal remains.

4.3 The State party also notes that the application for *amparo* was filed 46 days after the alleged disappearance and that it prompted the court to request immediately that the bodies named in the application should report on whether they had arrested Mr. Mora Márquez and, after it had received a negative response, to allow the case to proceed and to order the Public Prosecutor's Office to take all necessary steps to locate the victim and charge those responsible.

4.4 The State party also notes that the authors expressly admitted that proceedings were under way, that they did not allege that there had been any unreasonable time lapse and that they did not indicate that they had taken steps to initiate a review of the investigative

⁵ The authors refer to *Serna et al. v. Colombia* (CCPR/C/114/D/2134/2012), para. 9.4; *Saker v. Algeria* (CCPR/C/86/D/992/2001), para. 9.2; *Boucherf and Buoherf v. Algeria* (CCPR/C/86/D/1196/2003), para. 9.2; and *Sarma et al. v. Sri Lanka* (CCPR/C/78/D/950/2000), para. 9.3.

⁶ The authors refer, inter alia, to *Saker v. Algeria*; *Boucherf and Boucherf v. Algeria*; and *Sarma et al. v. Sri Lanka*.

⁷ The State party refers to *P.L. v. Germany* (CCPR/C/79/D/1003/2001) and *Riedl-Riedenstein et al. v. Germany* (CCPR/C/82/D/1188/2003).

proceedings, despite the fact that one of the functions of the Ombudsman, to whom they had recourse, is to follow up and press the Public Prosecutor's Office to take action.

4.5 In short, the State party maintains that the remedies remain pending, since an investigation is under way to determine the whereabouts of Mr. Mora Márquez, an investigation that was launched from the moment the complaint was filed. The State party notes that only 16 months elapsed between the date of the complaint and the date of submission of the communication to the Committee, which is not enough time to deem that there has been an undue delay that would justify the failure to exhaust domestic remedies. The State party also notes that the investigation of an enforced disappearance of a person is a complex process, since those responsible will seek to eliminate all evidence that would make it possible to identify the victim's whereabouts. The State party therefore maintains that, in this type of case, the authorities' diligence in investigating and identifying the whereabouts of the disappeared person should be taken into account. In the present case, the State has carried out a speedy and diligent investigation in strict compliance with the law. The State party therefore concludes that the Committee should declare the communication inadmissible.

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

5.1 On 20 February 2018, the authors submitted their comments on the State party's observations on the admissibility of the communication, pointing out that article 5 (2) (b) of the Optional Protocol provides that the requirement to exhaust domestic remedies does not apply where the proceedings are unreasonably prolonged.

5.2 The authors also indicate that, although they waited 46 days before submitting an application for *amparo*, States have an obligation to investigate cases of enforced disappearance irrespective of whether or not a complaint has been filed. They cite the Inter-American Court of Human Rights, which has found that whenever there are reasonable grounds to suspect that a person has been subjected to enforced disappearance, an investigation should be initiated, and that "this obligation exists regardless of the filing of a complaint, since in cases of forced disappearance international law and the general duty to guarantee, impose the obligation to investigate the case *ex officio*, without delay, and in a serious, impartial, and effective manner [...]. Without detriment of the aforementioned, in any case, all State authorities, public officials, or individuals who have received news about acts destined to the forced disappearance of persons, shall denounce them immediately".⁸

5.3 The authors recall that the investigations have not led to any results and that the enforced disappearance has continued for three years after it began. They also point out that the judge did not visit the places where Mr. Mora Márquez was presumed to be detained, nor did he request the analysis of skeletal remains until two and a half years after the disappearance. The authors conclude that the State party has failed to grasp the gravity of the situation.

State party's observations on the merits

6.1 In its observations of 26 March 2018, the State party asked the Committee to find that it had not violated any of the articles of the Covenant. The State party maintains not only that no evidence has emerged of direct or indirect participation by agents of the State party in the disappearance of Mr. Mora Márquez but also that the disappearance might have been carried out without the consent or authorization of the State party's authorities by irregular groups operating in Colombia who entered the Bolivarian Republic of Venezuela in an irregular manner. The State party therefore contends that it cannot be held internationally responsible, since it has not been established that the alleged acts were committed by any of its agents or by private parties with the complicity, tolerance or acquiescence of State authorities.

6.2 In addition, the State party maintains that it has given the family of Mr. Mora Márquez effective access to the resources provided for in the legal system for the investigation of the alleged enforced disappearance and that a serious investigation was initiated without delay, using all available legal means, with a view to ascertaining the truth and investigating,

⁸ *Radilla-Pacheco v. Mexico*, judgment of 23 November 2009, preliminary objection, merits, reparations and costs, Series C, No. 209, para. 143.

prosecuting, apprehending, bringing to trial and punishing those responsible for ordering and carrying out the acts.

6.3 Finally, the State party argues that it cannot be held internationally responsible for the authors' suffering as a result of the continuing uncertainty about the fate and whereabouts of their father, since it is not possible to attribute international responsibility to the State for the disappearance because it is not related to the actions of State agents, and since the State has not failed in its duty to investigate the alleged enforced disappearance with due diligence.

Authors' comments on the State party's observations on the merits

7.1 In their comments of 3 August 2018, the authors assert that there has been an increase in reported cases of politically motivated enforced disappearances in the State party. They emphasize that the Office of the United Nations High Commissioner for Human Rights (OHCHR) noted several cases of enforced disappearances in a 2017 report.⁹

7.2 The authors also recall that they are not responsible for establishing whether or not it was State agents who carried out the enforced disappearance, since it is the State party that has the competence and the obligation to conduct investigations, identify those responsible, determine who, if anyone, ordered and carried out the acts in question, and bring those responsible to trial and impose the applicable penalties. The authors argue that the State party has an obligation to ensure justice and to prevent the disappearance from going unpunished and that it also has an obligation to establish, within a reasonable time, the responsibility of the perpetrators.

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.

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 notes the State party's argument that the communication should be declared inadmissible under article 5 (2) (b) of the Optional Protocol for failure to exhaust domestic remedies because the investigations are still under way and because only 16 months elapsed between the date of the initial complaint and the date of submission of the communication to the Committee, which is insufficient time to consider that there has been an unreasonable delay that would justify the failure to exhaust domestic remedies. The Committee also notes the authors' argument that the proceedings in their father's case have been unreasonably prolonged and that his enforced disappearance continues.

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.¹⁰ However, for the purposes of article 5 (2) (b) of the Optional Protocol, domestic remedies must not be unreasonably prolonged. The Committee notes that more than five years have elapsed since the first complaint was lodged regarding the disappearance of Mr. Mora Márquez. It also notes that the State party has provided only very general information to justify the delay. In the light of the above, the Committee considers that the investigations have been unduly prolonged and that, accordingly, it is not prevented, under article 5 (2) (b) of the Optional Protocol, from considering the present complaint.¹¹

⁹ *Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017*, Geneva, OHCHR, 2017; available at: www.ohchr.org/Documents/Countries/VE/HCRReportVenezuela_1April-31July2017_EN.pdf.

¹⁰ Settled jurisprudence of the Committee since *T.K. v. France* (CCPR/C/37/D/220/1987), para. 8.3.

¹¹ *Moreno Pérez et al. v. Mexico* (CCPR/C/127/D/2760/2016), para. 11.4; *Téllez Padilla et al. v. Mexico* (CCPR/C/126/D/2750/2016), para. 8.4.

8.5 As all admissibility requirements have been met, and given that the authors' complaints under articles 2 (3), 6 (1), 7, 9, 10 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 of 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, as provided under article 5 (1) of the Optional Protocol.

9.2 The Committee notes that the authors claim that the facts of the present case constitute a politically motivated enforced disappearance and that there has been an increase in reported cases of politically motivated enforced disappearance in the State party. The Committee also notes that the State party maintains that no evidence has emerged of direct or indirect participation by agents of the State in the disappearance of Mr. Mora Márquez and that the disappearance might have been carried out without the consent or authorization of the State party's authorities by irregular groups operating in Colombia who entered the Bolivarian Republic of Venezuela in an irregular manner.

9.3 The Committee considers that it is not possible to ignore the particular seriousness of attributing to a State party responsibility for the existence of a pattern of enforced disappearances.¹² While the Committee notes the existing allegations of enforced disappearances carried out in the State party *prior* to the time of the events in the present case, which led to the establishment, in February 2012, of the Truth and Justice Commission to investigate and punish crimes, disappearances, torture and other politically motivated human rights violations that occurred between 1958 and 1998, and the existing allegations of enforced disappearances carried out in the State party *after* the time of the events in the present case,¹³ it also notes that no information was submitted on a specific context of enforced disappearances at the time or in the place of the events in the present case. Furthermore, in the absence of any evidence to support the presumption of participation, support or acquiescence of State agents in the disappearance of Mr. Mora Márquez,¹⁴ the Committee cannot reach any conclusion regarding the forced or unforced nature of the disappearance.

9.4 In this context, the Committee notes that the authors claim that the facts constitute a violation of articles 2 (3), 6 (1) and 7 of the Covenant in respect of Mr. Mora Márquez, given that he was a victim of disappearance and that the investigation has yielded no results because no field inspections were carried out and no efforts were made to identify the pickup truck allegedly involved. The Committee also takes note of the State party's argument that it cannot be held internationally responsible because it has not been established that the alleged acts were committed by any of its agents or by private parties with the complicity, tolerance or acquiescence of State authorities, and that the investigations, which began as soon as the allegations were made, have been diligent, expeditious and in strict compliance with the law and have been aimed at establishing the truth and at identifying, capturing, prosecuting and punishing all those responsible for ordering and carrying out the acts. The Committee also notes that, according to the State party, the application for *amparo* was accepted and an order was issued to take all necessary action to locate Mr. Mora Márquez and charge those responsible, and that the Public Prosecutor's Office has conducted more than 45 investigative proceedings.

9.5 The Committee stresses that the content and scope of the right to life includes not only negative and positive substantive obligations but also positive procedural obligations.¹⁵ Indeed, the duty of States parties to protect the right to life requires them not only to avoid the arbitrary deprivation of life but also to investigate and prosecute possible cases of

¹² Compare with Inter-American Court of Human Rights, *Castillo González et al. v. Venezuela*, judgment of 27 November 2012, merits, Series C, No. 256, para. 125.

¹³ OHCHR, *Human rights violations and abuses ...*

¹⁴ Inter-American Court of Human Rights, *Godínez-Cruz v. Honduras*, judgment of 20 January 1989, merits, Series C, No. 5, para. 154.

¹⁵ General comment No. 36 (2018) on the right to life, paras. 7, 19, 21 and 27. Minnesota Protocol on the Investigation of Potentially Unlawful Death. See also *Moreno Pérez et al. v. Mexico*, para. 12.5.

unlawful deprivation of life, to punish those responsible and to provide full reparation.¹⁶ The duty to take positive measures to protect the right to life derives from the general duty to ensure the rights recognized in the Covenant, which is provided for in article 2 (1) when read in conjunction with article 6, and from the specific duty to protect the right to life by law, which is articulated in the second sentence of article 6 of the Covenant. In particular, States parties should take appropriate preventive measures to protect individuals from unlawful and arbitrary deprivation of life.¹⁷ In addition, States parties should investigate and, as appropriate, prosecute those responsible for such incidents. This obligation is implicit in the obligation to protect and is reinforced by the general duty to ensure the rights recognized in the Covenant, which is articulated in article 2 (1), when read in conjunction with article 6 (1), and the duty to provide an effective remedy to victims of human rights violations and their relatives, which is set out in article 2 (3) of the Covenant, when read in conjunction with article 6 (1).¹⁸ The Committee also refers to its jurisprudence, according to which criminal investigation and prosecution are necessary remedies for violations of human rights such as those protected by article 6, and that there may be a violation of the Covenant when the State party fails to take appropriate measures to investigate and punish those who have violated those rights and to provide redress to victims.¹⁹

9.6 However, in the present case, given that the State party was unaware of the situation of real and immediate risk to Mr. Mora Márquez's life, since the threats he had received prior to his disappearance and the need for protection measures were not the subject of a public complaint or a report to the State authorities,²⁰ that the State party conducted a significant number of investigative procedures and it is not for the Committee to determine the usefulness of specific investigative measures unless the failure to take them is contrary to objective standards, or is manifestly unreasonable,²¹ and, lastly, that the duty to investigate is an obligation of means – or of due diligence – and not an obligation of result, the Committee considers that, in the present case, it does not have sufficient evidence to conclude that the State party has violated articles 6 (1) and 7, read alone and in conjunction with article 2 (3) of the Covenant.

9.7 The Committee further notes that the authors claim that the facts also constitute a violation of articles 9, 10 and 16 of the Covenant in respect of Mr. Mora Márquez, though they offer no further details other than to allege that the State party is responsible for his disappearance. The Committee considers that, since it has not been possible to prove that the facts of the present case constituted an enforced disappearance attributable to the State party or that they involved a violation of articles 6 (1) and 7 of the Covenant, and in the absence of clear information on the fate and whereabouts of Mr. Mora Márquez, it does not have sufficient evidence to find a violation of articles 9, 10 and 16 of the Covenant.

9.8 Finally, the Committee also notes that the authors claim that their own rights under articles 2 (3) and 7 of the Covenant have been violated owing to the cruel and inhuman treatment they have suffered as a result of the continuing uncertainty about the fate and whereabouts of their loved one. The Committee also notes that the State party maintains that it cannot be held internationally responsible for this, since it is not possible to attribute international responsibility to the State for the disappearance and since the State has not failed in its duty to investigate the alleged enforced disappearance with due diligence. In this regard, the Committee considers that, since it has not been possible to prove that the facts of the present case constituted an enforced disappearance attributable to the State party or that they involved a violation of articles 2 (3), 6 (1), 7, 9, 10 and 16 of the Covenant, it does not have sufficient evidence to find a violation of the authors' rights under article 2 (3), read in conjunction with article 7 of the Covenant.

¹⁶ General comment No. 36, para. 19. See also *Moreno Pérez et al. v. Mexico*, para. 12.5.

¹⁷ General comment No. 36, para. 21. See also *Moreno Pérez et al. v. Mexico*, para. 12.5.

¹⁸ General comment No. 36, para. 27, which also recalls that investigations and prosecutions of cases involving potentially unlawful deprivation of life should be conducted in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death. See also *Moreno Pérez et al. v. Mexico*, para. 12.5.

¹⁹ *Amirov and Amirova v. Russian Federation* (CCPR/C/95/D/1447/2006), para. 11.2.

²⁰ Compare with Inter-American Court of Human Rights, *Castillo González et al. v. Venezuela*, merits, paras. 128 and 131.

²¹ *Ibid*, para. 153.

10. In the light of the above, the Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not reveal any violation of the articles of the Covenant.

Annex I

[Original: English]

Joint opinion of José Manuel Santos Pais and Gentian Zyberi (partially dissenting)

1. We regret not being able to join the majority of the Committee in concluding that it does not have sufficient evidence to find a violation of the rights of Alcedo Mora Márquez under article 2 (3), read in conjunction with articles 6 and 7, of the Covenant.

2. By now Mr. Mora Márquez has been missing for more than five years, having disappeared on the morning of 27 February 2015. While State authorities have taken steps to investigate Mr. Mora Márquez's disappearance, these seem however to have fallen short of what is required.

3. The facts of the case reveal that Mr. Mora Márquez was a regional leader of a political party (the Venezuelan Revolutionary Party) and an outspoken individual who publicly denounced acts of corruption and criticized government policies (para 2.2). Before disappearing, he was working as Secretary to the Secretary-General of the government of the State of Mérida, in the Andean region, in the western part of the Bolivarian Republic of Venezuela. In that capacity, he denounced several state government officials and personnel of the State-owned company *Petróleos de Venezuela* for involvement in a network that was smuggling gasoline into Colombia and provided the Governor and the Secretary-General of the government of the State of Mérida with a dossier containing information on the individuals involved in the smuggling operation (para 2.3).

4. Two days before his disappearance, Mr. Mora Márquez was intercepted near his home by armed men who arrived in a black pickup truck and threatened him with death. The authors indicate that the Bolivarian National Intelligence Service used vehicles similar to that used by the armed men. Mr. Mora Márquez did not lodge a formal complaint concerning the threats made against him, but he did tell his family and friends about them, suspecting that the Bolivarian National Intelligence Service had issued a warrant for his arrest, on allegations of corruption, and was trying to set him up (paras 2.4 and 2.10).

5. The authors, who are Mr. Mora Márquez's sons, were able, even after the disappearance, to talk to their father by telephone, on 2 March 2015 (para 2.6) and on 4 March 2015, and even received several text messages from their father's mobile, although they were alarmed by these messages, since their father did not usually add his initials at the end of his messages (para 2.7).

6. During the same week of the disappearance of Mr. Mora Márquez, two of the author's friends, brothers of Colombian nationality who had applied for asylum in the Bolivarian Republic of Venezuela, also disappeared. The two brothers had similarly been followed by a truck with identical characteristics to the one observed near Mr. Mora Márquez's home, from which men had got out and threatened him (para 2.13).

7. It is a fact that Mr. Mora Márquez did not report to the State authorities the death threats he had received just two days before his disappearance or a need for protection measures.¹ However, following the disappearance of Mr. Mora Márquez, his family filed a complaint of enforced disappearance. Consequently, the State party acquired the obligation to conduct a search and a criminal investigation, which is a necessary remedy in cases of violations of human rights such as those protected by articles 6 and 7 of the Covenant.² The duty to investigate is an obligation of means – or of due diligence – and not an obligation of result.³ The State party should therefore ensure that all search and investigation activities meet due diligence requirements at all stages of the process, including an immediate and

¹ Inter-American Court of Human Rights, *Castillo González et al. v. Venezuela*, judgment of 27 November 2012, merits, paras. 128 and 131.

² *Krasovskaya and Krasovskaya v. Belarus* (CCPR/C/104/D/1820/2008), para. 8.3.

³ Inter-American Court of Human Rights, *Baldeón García v. Peru*, merits, judgment of 6 April 2006, para. 93.

thorough official investigation by competent, independent professionals.⁴ However, the first intervention by a judge happened only on 18 May 2015, almost three months after the disappearance, following the submission by the authors of an application for *amparo* to the State and Municipal Court of First Instance No. 6 of the Mérida State Criminal Court Circuit (para 2.11).

8. In the present case, there seem to have been 45 investigative procedures undertaken by the State party's authorities so far, the last one on 4 August 2017 (para 4.2), although no detail has been given as to the content of those procedures. However, despite this number, these procedures do not appear to be part of a comprehensive search and investigation strategy; several of the procedures requested by the authors have not been carried out, for no stated reason, even though they seem essential to the process of searching for Mr. Mora Márquez and investigating his disappearance;⁵ and the fate and whereabouts of Mr. Mora Márquez have not yet been elucidated, more than five years after his disappearance. Similarly, while the authorities have put forward several investigative hypotheses, none has been fully explored and confirmed, nor have any possible perpetrators of the acts been so far identified, arrested or prosecuted, nor has the State party provided any information on the current stage of the proceedings, the last investigative procedure dating back to August 2017 as already mentioned.⁶

9. In view of the foregoing, and in the absence of any explanation from the State party regarding the lack of progress in the investigation, particularly since August 2017, we would therefore have concluded that the State party has failed to fulfil its obligations under article 2 (3), read in conjunction with articles 6 and 7, of the Covenant, in respect of Mr. Mora Márquez, as it has failed to take timely remedial action in the matter and to ensure that the investigation into his disappearance was conducted in accordance with the principle of due diligence.

⁴ Center for Justice and International Law, *Debida Diligencia en la Investigación de Graves Violaciones a Derechos Humanos* (Buenos Aires, 2010).

⁵ For example, field inspections, identification of the black pickup truck and its occupants, clarification of the possible responsibility of the Bolivarian National Intelligence Service in the disappearance (para. 2.4), investigation of the home in which the disappeared person allegedly found himself when he last spoke to his children (para. 2.6) and possible connections to the government of the State of Mérida (para 2.10).

⁶ *Krasovskaya and Krasovskaya v. Belarus*, para. 8.3.

Annex II

[Original: English]

Individual opinion of Committee member Arif Bulkan (dissenting)

1. In cases involving alleged enforced disappearances, the Committee has repeatedly stated that the burden of proof does not lie solely with the authors of the communication, as they may not have access to the relevant information.¹ Instead, the onus is on the State party “to show that it held no responsibility for the enforced disappearance and that it had conducted a prompt, thorough and effective investigation to ascertain the facts and punish the perpetrators”.² Having regard for these well-established principles, I cannot agree with the Committee’s conclusion that the facts in the present case do not reveal any violation of the Covenant.

2. The tendency to look for evidence that directly links the disappearance to the State or its agents may have influenced the Committee in taking the view that there is no evidence as to the forced or unforced nature of the disappearance of Alcedo Mora Márquez (para 9.3). Enforced disappearance can, however, also be established through circumstantial evidence and presumptions, so long as these are consistent with the established facts.³ As explained by the Inter-American Court of Human Rights, “circumstantial or presumptive evidence is especially important in allegations of disappearances, because this type of repression is characterized by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim.”⁴ It is also worth bearing in mind that the standard of proof in these cases is a more flexible one than that in criminal proceedings.⁵

3. State responsibility for an enforced disappearance has been deduced from the combined effect of two types of evidence: the general context, that is the situation in the State, and the circumstances specific to the victim and his or her disappearance.⁶ Regarding the first type, there is overwhelming evidence from highly credible sources that the conditions in the Bolivarian Republic of Venezuela are repressive and authoritarian, and that they have spawned the greatest refugee crisis that Latin America has ever witnessed. The Committee stated that no information was submitted in the present case as to the context of enforced disappearances, noting that the information provided related to periods either before (1958–1998) or after (April–July 2017) the events in question (para. 9.3). One does not have to go far, however, to discover how dissent has been brutally silenced in the Bolivarian Republic of Venezuela, including during the period in question. Conditions have deteriorated to such an extent that in September 2019 the Human Rights Council established a fact-finding mission to investigate the situation of human rights in the country, including with regard to enforced disappearances, since 2014.⁷ Furthermore, many respected non-governmental organizations, such as Amnesty International and Human Rights Watch, have publicized the brutality of State responses to dissent over the period 2014–2019, involving torture, extrajudicial executions and forced disappearances.⁸

4. The circumstances relating to the victim in the present case demonstrate the specific peril he faced. Mr. Mora Márquez was not an ordinary citizen but the well-known regional

¹ See communication No. 139/1983, *Conteris v. Uruguay*, Views adopted on 17 July 1985, para. 7.2; and *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.3.

² *Serna et al. v. Colombia* (CCPR/C/114/D/2134/2012), appendix II, para. 6.

³ Inter-American Court of Human Rights, *Godínez Cruz v. Honduras*, judgment of 20 January 1989, merits, para. 136.

⁴ *Ibid.*, para. 137.

⁵ *Ibid.*, paras 133–134 and 140.

⁶ *Serna et al. v. Colombia*, para. 9.3.

⁷ Human Rights Council resolution 42/25.

⁸ See www.amnesty.org/download/Documents/AMR5302222019ENGLISH.PDF, www.refworld.org/docid/54f07d7815.html and <https://edition.cnn.com/2019/04/30/americas/venezuela-special-action-force-faes-accused-deaths-intl/index.html>.

leader of an opposition party who had denounced government corruption, criticized government policies and urged the population to organize against the Government (paras. 2.2–2.3), all suicidal activities. There is evidence that he was threatened, shortly before he vanished, by armed men in a vehicle similar to those used by the Bolivarian National Intelligence Services. Mr. Mora Márquez sent text messages to several friends about his situation that ended ominously with the word “beware” (para. 2.4). The few text messages that were sent from his mobile right after he disappeared raised suspicions, both for their form and their content, as to their authenticity; especially worrying was the fact that the messages praised the “immortal *comandante*”, a sentiment that this fierce critic of the Government would never have espoused (para. 2.7). Moreover, the authors have alleged that when they met with the Secretary-General of the State of Mérida, he told them that this had happened to their father “because he was talking a lot of nonsense” (para. 2.15), an allegation that the State party did not rebut.

5. In the face of these damning facts, the State party has offered no credible explanation, other than the baseless speculation that the victim’s disappearance could have been the work of irregular groups operating in Colombia (para. 6.1). Nowhere is any clue provided as to why Colombian operatives would be interested in Mr. Mora Márquez; on the contrary, given his background and relentless public opposition, the victim fits the profile of those routinely targeted by official agents. Compared to other cases where a finding of enforced disappearance was made,⁹ the facts here – both the general context and the specific circumstances – are, in my view, of sufficient weight to raise a presumption of State involvement in the disappearance of Mr. Mora Márquez.

6. Turning to the procedural dimension of the State party’s obligations in respect of Mr. Mora Márquez’s disappearance, the State party failed in its obligations under article 2 (3) when read in conjunction with article 6 of the Covenant. On this point, I am in full agreement with the arguments set out by my colleagues José Manuel Santos Pais and Gentian Zyberi (see annex I), but I wish to add a few observations of my own.

7. In not finding a violation of the procedural obligation, the Committee was persuaded by two facts: that the State party was unaware of any risk to the victim’s life since he had not complained of the threats he had received and that the State party had conducted 45 investigative procedures in relation to Mr. Mora Márquez. Unfortunately, neither of these reasons leads me to a similar conclusion of non-violation. The relevance of bringing threats to the attention of the authorities is to secure its protection through the prior adoption of positive measures.¹⁰ However, the relevant duty in this context is the duty to investigate – that is to say, one that arose after Mr. Mora Márquez disappeared. In assessing how the State authorities met this obligation, their lack of prior knowledge of threats is irrelevant – what counts are the steps they took after the victim disappeared, which, as has been more fully detailed by my aforementioned colleagues, were inadequate. While it is not for the Committee to assess the usefulness of specific measures, this broad position is qualified where the failure to take measures is manifestly unreasonable, as the majority noted (para 9.6). Here, there is no way to assess the reasonableness or not of what was done, as the State party provided no details. Aside from making unsupported claims that they conducted a “serious investigation” (para. 6.2), which included taking 45 investigative steps, the authorities have not elaborated on what these were.

8. The duty to investigate is indeed one of means, not of result. Nonetheless, an investigation “must be undertaken in a serious manner and not as a mere formality preordained to be ineffective”.¹¹ The combined deficiencies discussed above lead me to the conclusion that, in respect of Mr. Mora Márquez’s disappearance, the State party also failed to fulfil its obligations under article 2 (3), read in conjunction with article 6, of the Covenant.

⁹ See, for example, *Godínez Cruz v. Honduras*, paras. 153–156.

¹⁰ Inter-American Court of Human Rights, *Castillo González et al. v. Venezuela*, para. 128.

¹¹ See *Godínez Cruz v. Honduras*, para. 188.