



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 153/2020***

<i>Communication submitted by:</i>	Sandra Luz Román Jaimes (represented by counsel, Idheas, Litigio Estratégico en Derechos Humanos)
<i>Alleged victim:</i>	Ivette Melissa Flores Román
<i>State party:</i>	Mexico
<i>Date of complaint:</i>	18 October 2019 (initial submission)
<i>References:</i>	Transmitted to the State party on 24 February 2016 (not issued in document form)
<i>Date of adoption of decision:</i>	24 October 2022

1. The author of the communication is Sandra Luz Román Jaimes, a Mexican national born on 4 August 1963. The communication is submitted on behalf of her missing daughter, Ivette Melissa Flores Román, born on 5 January 1993. The author claims that the State party has violated her daughter's rights under articles 1, 2 (b)–(f), 5 (a) and 15 (1) of the Convention on the Elimination of All Forms of Discrimination against Women. The Optional Protocol entered into force for the State party on 15 March 2002.

Facts as submitted by the complainant

2.1 The author's daughter, Ivette Melissa Flores Román, studied in Iguala, State of Guerrero, where she met Humberto Velázquez Flores, with whom she had a daughter at the age of 16. The author's daughter then moved into the home of Mr. Velázquez Flores' parents, where she was subjected to continuous ill-treatment. She was not allowed to leave the house, was forced to stop communicating with her family and to change the way she dressed, and was not allowed to look at anyone when she went outside with her partner. She was insulted and beaten by her partner when she

* Adopted by the Committee at its eighty-second session (13 June to 1 July 2022).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Ramah, Nicole Ameline, Marion Bethel, Corinne Dettmeijer-Vermeulen, Naela Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Lia Nadaraia, Aruna Devi Narain, Ana Pelaez Narvaez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Franceline Toe-Bouda and Jie Xia.



disobeyed these orders. After being held incommunicado for 40 days at the home of her partner's parents, she informed the author that her partner's father, Humberto Velázquez Delgado, would let her go once her baby daughter turned 1 year old.

2.2 On 18 December 2010, the author's daughter and granddaughter were able to return to the author's home, and the author's daughter went back to secondary school to complete her studies. However, owing to threats and surveillance by her former partner's family, she had to change schools. Throughout 2011, the author's daughter received daily calls from her former partner and his brothers, threatening her with death. In addition, her former partner went to the author's house regularly and, on several occasions, used a firearm to fire shots at the house.

2.3 On 10 June 2012, Humberto Velázquez Delgado offered to let the author's daughter move into one of his houses in Iguala with her baby daughter, but she declined. Her former partner's father returned two days later to inform her that she was going to be killed and that she should leave Iguala while he "fixed the problem". On 14 June 2012, the author decided to flee with her daughter and granddaughter to Querétaro. A few days later, the author's daughter moved to Mexico City, after travelling to Acapulco, State of Guerrero, to a house belonging to her former partner's father. In August 2012, the author's daughter went to her father's house. At the end of September, she returned to her former partner's house, but decided to go back to her father's house because the house was under surveillance. She stayed there for several days, with her former partner's father checking on her daily through calls to her mobile phone. On 20 October 2012, the author decided to move her daughter and granddaughter into her home.

2.4 The author and her daughter never dared to report the acts of domestic violence or the controlling behaviour of Humberto Velázquez Delgado because of his position as an investigative police officer with the Office of the Attorney General of the State of Guerrero. Since 2001, he had been under investigation for the crimes of deprivation of personal liberty, bodily harm, torture and rape.

2.5 In the early hours of 24 October 2012, the author's home was shot at several times. Five armed men entered the house by force. Two of them, dressed in black and with their faces covered, entered the room where the author's children and other family members were hiding and asked threateningly which of them was Melissa (the author's daughter), threatening to kill the women if they did not answer. The armed men took the author's daughter and the wife of one of the author's sons, Alba Itzel Osorio Mota, taking them out to a grey vehicle with tinted windows.

Exhaustion of local remedies

2.6 The author maintains that she and her family members have pursued all possible domestic remedies to search for her daughter and ensure that those responsible for her detention and disappearance are investigated, tried and punished.

Preliminary investigation by the Office of the Attorney General of the State of Guerrero in Iguala

2.7 One of the author's sons immediately reported the incident by telephone to the Control, Command, Communication and Computing Centre for Security. He also reported the incident to the Office of the Attorney General of the State of Guerrero in Iguala. The father of Ivette Melissa Flores Román also went immediately to the National Police Headquarters and the Infantry Battalion in Iguala to ask them to search for his daughter, and then reported the kidnapping to the Office of the Attorney General of the State of Guerrero in Iguala. The Office of the Attorney General launched a preliminary investigation into the disappearance, taking a statement from the author's son, collecting the names of witnesses and possible perpetrators, and

requesting the police to carry out inquiries to corroborate the crime. However, an immediate search was not ordered at that time, and none of the search mechanisms for disappeared women was activated.

2.8 On 28 October 2012, Alba Itzel Osorio Mota was released in Iguala, along with another woman. That same day, the author received messages on her mobile phone from her daughter, in which she said that the kidnappers were going to free her and that the author should not inform the police or the armed forces because they were with the kidnappers and would not listen to her. The author's daughter was never released, and when the author called the mobile phone number from which she had received the messages from her daughter, a man answered and told her that her daughter had already been released. Over the following weeks, the author received several messages from the same number, asking whether her daughter had arrived. On 29 October 2012, the investigative police recorded the release of Alba Itzel Osorio Mota in the investigation file on the disappearance of the author's daughter, but did not report on the steps taken to search for the author's daughter. In June 2016, the Iguala Prosecution Service took a statement from the author and requested the National Centre for Planning, Analysis and Information to Combat Crime to register the author's daughter as a missing person in its database.

Preliminary investigation by the Office of the Special Prosecutor for Violent Crimes against Women and Trafficking in Persons of the Office of the Attorney General of the Republic

2.9 On 9 May 2013, the author reported her daughter's disappearance to the Office of the Special Prosecutor for Violent Crimes against Women and Trafficking in Persons of the Office of the Attorney General of the Republic, which has the power to investigate and prosecute crimes under the Prevention and Punishment of Trafficking in Persons Act. The Office of the Special Prosecutor took statements from the author and one of her daughters, in which they described the violence Ivette Melissa Flores Román had been subjected to by her former partner during the years they had lived together and the controlling behaviour of her former partner's father up until the day she disappeared. At the end of May 2013, the Office of the Special Prosecutor requested the federal police to launch an investigation in all 32 States to search for and locate the author's daughter, and asked for her photograph to be published in the media and on the website of the Missing Women and Girls Programme. The federal police was also asked to investigate Humberto Velázquez Flores and Humberto Velázquez Delgado. On 7 June 2013, the federal police handed over information indicating that the two men had links to organized crime, as well as to the Operational Director of Public Security of Iguala. The author informed the Office of the Special Prosecutor that Humberto Velázquez Delgado had told her that in order to get her daughter back, she needed to contact a detained person in Iguala who belonged to an organized criminal group. He had also told her that Felipe Viveros Garcia, of the organized criminal group known as "La Familia Michoacana", had taken her daughter "because he liked her". The Office of the Special Prosecutor requested information on this individual. The Office also ordered the genetic profiles of the author and her other daughter to be compared against the remains of several women found in a so-called narco-grave, but there was no match.

2.10 On 14 March 2014, the Office of the Special Prosecutor issued a notice of lack of jurisdiction, stating that the events under investigation could not be considered acts of violence against women or to be connected to the gender of the author's daughter, due to a lack of evidence pointing the investigation in that direction. The Office of the Special Prosecutor also declined jurisdiction on the basis that the investigation had revealed that members of organized criminal groups were involved and that it was therefore the responsibility of the Office of the Assistant Attorney General for

the Investigation of Organized Crime to continue the investigation. In the notice of lack of jurisdiction, the Office of the Special Prosecutor did not set out lines of investigation for the Office of the Assistant Attorney General to follow on the basis of the disappearance of the author's daughter being an act of gender-based violence against women, nor did it note the need to coordinate the actions of the two Offices.

Investigation by the Office of the Assistant Attorney General for the Investigation of Organized Crime

2.11 On 11 April 2014, the Office of the Assistant Attorney General for the Investigation of Organized Crime and its Special Unit for the Investigation of Trafficking in Children, Undocumented Persons and Human Organs launched a preliminary investigation into Humberto Velázquez Delgado, one of his sons and Felipe Viveros Garcia, requesting background information on the three individuals. The authorities of all 32 States were asked whether they had information on the whereabouts of the author's daughter, and steps were taken to offer a reward for information on her whereabouts and the alleged perpetrators, but nothing came of these efforts. The author gave several statements between 2014 and 2018, describing in detail the violence her daughter had been subjected to by her former partner and his family prior to her disappearance. She also provided information on persons who might have been involved in her daughter's disappearance, on the possibility that her daughter might have been sexually exploited and other investigative leads. On 13 July 2016, the Prosecution Service took a statement, for the first time, from the wife of the author's son who had been kidnapped alongside Ivette Melissa Flores Román and released a few days later. She described how they had been blindfolded and photographed, their hands and feet bound, and how the author's daughter had been interrogated and severely beaten. She also described the sexual violence they had been subjected to, and said that she had been able to identify Humberto Velázquez Delgado and one of his sons among the men guarding them. She also said that the author's daughter had not been released at any point.

2.12 Following this statement, the Office of the Assistant Attorney General took steps to request information from the National Centre for Planning, Analysis and Information to Combat Crime on kidnappings and organized criminal groups in Iguala from 2012 to date, but to no avail. The Office of the Assistant Attorney General also asked the federal police to investigate Humberto Velázquez Delgado. His home was put under surveillance and information was received about his links to an organized criminal group called "Los Guerreros Unidos" and his appointment as an investigative police officer. However, the Office of the Assistant Attorney General never subpoenaed him with a view to establishing his links to the author's daughter. The Office of the Assistant Attorney General also took a statement from Felipe Viveros Garcia, who denied knowing the author's daughter, and from one of the sons of Humberto Velázquez Delgado, who was under arrest in Iguala. He confirmed that his brother, Humberto Velázquez Flores, had mistreated the author's daughter and that he had said he would do anything to keep his young daughter upon separating from the author's daughter. The Office of the Assistant Attorney General took several other steps based on the information provided by the author and remains found in clandestine graves, without achieving any results. The Prosecution Service did not develop a line of investigation related to the trafficking and exploitation of women.

Investigation by the Specialized Unit for the Search for Missing Persons of the Office of the Attorney General of the Republic

2.13 On 31 March 2015, a preliminary investigation was launched by the Specialized Unit for the Search for Missing Persons following the disappearance, in September 2014, of 43 students in Iguala. The author appeared several times before the officials

in charge of the preliminary investigation. On 26 February 2016, she was interviewed by the federal police, who subsequently requested information on Humberto Velázquez Delgado and provided information on 15 July 2016 confirming the links between him and “La Familia Michoacana”. However, the federal police did not take any steps to establish his links to the author’s daughter. On 5 July 2016, as part of the preliminary investigation, the federal police conducted, for the first time, an inspection of the author’s house and took note of the bullet holes, but did not carry out an expert examination to establish the type of firearm used.

2.14 On 20 October 2017, the author asked the official from the Specialized Unit for the Search for Missing Persons to investigate her daughter’s disappearance with a gender perspective, based on domestic and international legal standards, given the context in which the events had occurred and to ensure the effectiveness of the investigation. The official turned down her request on the grounds that the Office of the Special Prosecutor for Violent Crimes against Women and Trafficking in Persons was the only office competent to carry out investigations with a gender perspective.

Submission of a complaint to the National Human Rights Commission and an application for amparo

2.15 In March 2015, the author submitted a complaint to the National Human Rights Commission, citing irregularities in the investigations carried out by the various entities of the Prosecution Service. The Commission found that there had been various omissions and suggested that the Office of the Attorney General of the Republic conduct an administrative inquiry into the officials responsible for those omissions and investigate the possible participation of public officials in the disappearance of the author’s daughter.

2.16 On 16 February 2018, the author submitted an application for amparo in connection with the disappearance of her daughter and the failure of the Prosecution Service to investigate the events as acts of gender-based violence. The author condemned the stereotyping that had affected how the investigation was approached, the lack of any standards to ensure gender-sensitive criminal investigations, and the systematic failures and ineffectiveness of the investigation into her daughter’s disappearance. On 9 November 2018, the Seventh District Court for Amparo in Criminal Matters found that the Federal Prosecution Service had not observed the General Act on Enforced Disappearance of Persons or incorporated a gender perspective into the search for the author’s daughter and the investigation into her disappearance.

Allegation

3.1 The author contends that the State party violated articles 1 and 2 (b)–(f) of the Convention, read in conjunction with general recommendations No. 19, No. 28 and No. 35, due to the failure of the Iguala authorities to act immediately and diligently in the search for her daughter. That failure to act resulted in her daughter being a victim of gender-based violence, torture and disappearance, in violation of articles 1 and 2 (b)–(f) of the Convention. The author notes that the Committee on Enforced Disappearances, the Working Group on Enforced or Involuntary Disappearances and the Inter-American Court of Human Rights have established that there is a close link between disappearances and acts of violence against women, such as sexual violence.¹ The author contends that the Iguala Prosecution Service should have known that her daughter, held captive by several armed men, was at serious risk of being subjected

¹ CED/C/MEX/FAI/1, para. 47; CED/C/MEX/FAI/1, para. 47; A/HRC/WGEID/98/2, para. 8; Inter-American Court of Human Rights, López Soto et al. v. Venezuela, judgment of 26 September 2018, para. 145.

to torture and sexual violence, and should have acted as soon as the author's family members filed the report. The author argues that, at the time of the events, there were a number of laws obliging the Iguala Prosecution Service to act immediately and with a gender perspective, such as the Women's Access to a Life Free of Violence Act of the State of Guerrero and the Alba Protocol, modified in 2012 pursuant to the judgment of the Inter-American Court of Human Rights in the case of González et al. v. Mexico. The Iguala Prosecution Service failed to consider the context in Iguala, where a number of women had been disappeared that same day, with a similar modus operandi, indicating a pattern of enforced disappearances perpetrated by organized criminal groups.

3.2 The author contends that the State party also violated articles 1, 2 (b)–(f), 5 (a) and 15 (1) of the Convention, read in conjunction with general recommendations No. 19, No. 28, No. 33 and No. 35, due to: (a) the decision not to investigate the events as acts of gender-based violence; (b) the stereotyping that affected how the investigation was approached; (c) the absence of provisions in criminal law guaranteeing the gender-responsive investigation of acts of organized crime; and (d) the systematic failures and ineffectiveness of the investigation into her daughter's disappearance.

3.3 The author reiterates the Committee's jurisprudence on how stereotyping and preconceived notions of what constitutes domestic or gender-based violence can affect the right of women to a fair trial. The author alleges that the Office of the Special Prosecutor for Violent Crimes against Women and Trafficking in Persons was influenced by stereotypes and preconceived notions when it applied a restrictive interpretation of its legal competence and denied the existence of acts of gender-based violence committed by organized criminal groups. This is in addition to the other omissions in the investigation conducted by the Office of the Special Prosecutor for Violent Crimes against Women and Trafficking in Persons and the failure to protect the right of the author's daughter to a life free of gender-based violence.

3.4 The author contends that the State party violated article 2 (f) of the Convention, read in conjunction with general recommendation No. 33, because the Organized Crime Act does not provide for gender-responsive investigation of acts of organized crime when the victim is a woman. The author argues that this gap fosters impunity in cases of violence against women, contributes to the recurrence of such violence, and constitutes a violation of the obligation to guarantee equal access to justice for women under article 15 (1) of the Convention.

3.5 The author claims that the absence of a gender perspective in the investigation affected its diligence and effectiveness. The author submits that the Office of the Assistant Attorney General for the Investigation of Organized Crime took too long to take statements from key persons in the investigation, never formally linked Humberto Velázquez Delgado and his son to the events, and failed to consider the existence of a pattern of disappearances in Iguala committed by organized criminal groups and State officials.

3.6 The author requests the Committee to recommend that the State party: (a) conduct a diligent search for her daughter and a diligent, thorough and adequate investigation, both of which should incorporate a gender perspective; (b) take necessary measures to ensure adequate criminal procedures for acts of violence against women, in particular kidnappings and disappearances of women committed by organized criminal groups; (c) provide training to officials responsible for searching for disappeared persons and to local and federal prosecutors on how to integrate a gender perspective into their processes.

State party's observations on admissibility and the merits

4.1 On 17 September 2020, the State party submitted its observations on the admissibility and merits of the communication. The State party recalls the facts of the case and the steps taken in the framework of the preliminary investigation launched in 2015 by the Specialized Unit for the Search for Missing Persons of the Office of the Attorney General of the Republic. The State party notes that crime scene forensics experts identified bodies and skeletal remains found in Iguala in February and March 2015 and compared them against the genetic profile of the author. The Office of the Attorney General of the Republic requested information from the State Commission for Public Security on persons held in detention from 2010 to 2015. Information on the individuals linked to the events under investigation was also retrieved from the Plataforma México database and requested from the National Centre for Planning, Analysis and Information to Combat Crime. On 9 November 2016, the Institutional Security Directorate was asked to provide security measures for the author. The State party notes that, on 24 July 2018, a statement was taken from Humberto Velázquez Flores, the former partner of Ivette Melissa Flores, and it was confirmed that their young daughter, Hanny Larissa Velázquez Flores, was not missing.

4.2 Following a working meeting with the author, several searches were conducted in 2019 and 2020 in the State of Guerrero. The State party is currently considering when would be the opportune moment to take statements from Humberto Velázquez Delgado and his son, Humberto Giovanni Velázquez Ruiz, in case they have any involvement in the disappearance of Ivette Melissa Flores.

4.3 The State party notes that after the author requested the Office of the Attorney General of the Republic, on 20 October 2017, to apply a gender perspective, the public prosecutor did not immediately follow up on her request. The State party also notes that, for this reason, the author submitted an application for amparo on 16 February 2018, in view of the alleged omissions of the Prosecution Service. As a result, a preliminary investigation was launched. A coherent, exhaustive, impartial, effective, specialized and gender-differentiated investigation was carried out, applying the Standardized Protocol for the Search for Missing Persons, in coordination with 19 different government entities.² The State party notes that, once a statement had been taken from the wife of the author's son, the presence of domestic violence was confirmed, and a new and main line of investigation was opened. On 26 December 2019, it was requested that a context analysis be conducted of criminal activities such as deprivation of liberty, enforced disappearance and human trafficking in the State of Guerrero from 2011 to 2019.

4.4 The State party notes that, on 16 February 2018, the author submitted an application for amparo, as an indirect victim, due to the omissions in the diligent handling of the investigation into her daughter's whereabouts; the failure to apply a gender perspective; the failure to comply with her requests of 20 October 2017 and the measures set out in urgent action request No. 225/2015 of the Committee on Enforced Disappearances; and the failure to apply national standards in relation to enforced disappearances. The Seventh District Court for Amparo in Criminal Matters issued a judgment in which it ordered the official of the Specialized Unit for the Search for Missing Persons to provide a well-founded response to the author's requests, as contained in her communication of 20 October 2017, and to report on the steps taken to search for the author's daughter and the measures ordered in response to the urgent action request of the Committee on Enforced Disappearances. The State party notes that, following the appeal filed by the author, the Third Collegiate Criminal Court of the First Circuit issued, on 22 August 2019, a decision stating that

² AP/FGR/FEMDH/FEIDF/M11/009/2019.

the author's appeal was well-founded and that the Prosecution Service had failed to comply with the amparo judgment. The Court found that the responses given by the relevant authority to the author's requests were, for the most part, inconsistent, except with regard to the measures ordered to comply with the urgent action request. On 20 February 2020, the district judge ruled that the steps taken did not respond to the author's requests of 20 October 2017, and a federal judge requested the relevant office of the Prosecution Service to report on the steps taken to comply with the author's requests. The State party reports that compliance with the amparo judgment is still pending.

4.5 The State party notes that the author, three of her children and the wife of one of her sons have been included in the National Register of Victims and are receiving assistance from the Executive Commission for Victim Support comprehensive care centre in the State of Guerrero, including food, accommodation and transportation. The State party highlights that the National Institute for Women will ensure and promote the mainstreaming of a gender perspective into the investigation and search for the author's daughter. In addition, the National Institute for Women will analyse the legal framework in relation to kidnappings and disappearances of women committed by criminal organizations, with a view to proposing legal reforms to enable access to justice for women and girls in such situations. Training on incorporating a gender perspective will be encouraged for officials responsible for carrying out investigations and searching for disappeared women.

4.6 The State party invites the Committee to declare the communication inadmissible for failure to exhaust all domestic remedies, in accordance with article 4 (1) of the Optional Protocol. The State party argues that the amparo proceedings and the appeal filed by the author were successful, which led to the Office of the Attorney General of the Republic being ordered to conduct a gender-responsive investigation into her daughter's disappearance, based on international standards. Consequently, in the event that the author is dissatisfied with the enforcement of the amparo judgment, she may, if she deems it necessary, file an appeal and a new application for amparo against the decisions of the Office of the Attorney General of the Republic. The State party argues that these remedies are adequate and effective, given that these same remedies were used by the author to request that a gender perspective be mainstreamed into the investigations into her daughter's disappearance.

4.7 With regard to the merits of the communication, the State party notes that in 2014 the First Chamber of the Supreme Court established that all courts must dispense gender-responsive justice, in view of the arguments set forth in the judgment of the Inter-American Court of Human Rights in the case of *González et al. v. Mexico*, and based on national and international standards. The Supreme Court found that integrating a gender perspective was integral to ensuring the right of women to a life free of violence and discrimination, and that consideration needed to be given to situations of disadvantage that, owing to gender issues, led to discrimination and impeded equality. In 2016, the First Chamber of the Supreme Court established that when a claim of gender-based violence is made, the judge must take into account the facts to verify whether such violence has taken place. The State party argues that, as demonstrated by the Supreme Court's ruling, it has taken action to comply with its international obligations under article 2 of the Convention.

4.8 With regard to article 5 (a) of the Convention, the State party argues that, in 2015, the Supreme Court, sitting in plenary, ruled that judges must challenge preconceived stereotypes in the law about gender roles and take into consideration situations of gender-based violence, discrimination or vulnerability in order to ensure effective and equal access to justice. The State party argues that it has made significant progress in ensuring that the courts dispense gender-responsive justice on equal terms, in accordance with article 15 of the Convention.

4.9 The State party argues that, although the author stated that the investigation into her daughter's disappearance did not take gender or the relevant international standards into consideration, following the amparo judgment, the Office of the Attorney General of the Republic was ordered to comply with the author's request. The State party therefore submits that the author's complaint to the Committee has already been resolved. The State party further submits that it has provided support to the author and her family, and that the National Institute for Women has submitted proposals for following up on the case and ensuring that it continues to be handled with a gender perspective. The State party also argues that it conducted the investigation into the facts of the case in accordance with its obligations under the Convention, and requests the Committee to find that it is not responsible for violations of articles 1, 2, 5 and 15 of the Convention.

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

5.1 On 15 January 2020, the author submitted her comments on the State party's observations.

5.2 The author notes that the State party, in its observations, failed to mention the preliminary investigations launched by the Office of the Attorney General of the State of Guerrero in Iguala in 2012, by the Office of the Special Prosecutor for Violent Crimes against Women and Trafficking in Persons in 2013, and by the Office of the Assistant Attorney General for the Investigation of Organized Crime in 2014. The author argues that those preliminary investigations are relevant for examining the admissibility of the communication, because the mistakes made in those investigations had an impact on the ineffectiveness of the search for her daughter and the delay in the domestic remedies she pursued. The author reiterates that the Iguala Prosecution Service did not, at the time it received the report and subsequently, adhere to the standards in place at the time for searching for disappeared women, nor did it take into account the risk that her daughter might be subjected to gender-based violence and decide to carry out an immediate search. The lack of immediate action led to the loss of the first few days to conduct the search. After the Office of the Special Prosecutor for Violent Crimes against Women and Trafficking in Persons declared that it lacked jurisdiction on the grounds that the disappearance of the author's daughter was not gender-based, the Office of the Assistant Attorney General for the Investigation of Organized Crime took a number of relevant, belated steps between 2014 and 2016. The author reiterates that, at present, almost nine years after her daughter's disappearance, the Office of the Assistant Attorney General still does not have a theory about what might have happened to her daughter, nor has it brought proceedings against any of those responsible for her disappearance.

5.3 The author rejects the State party's observations with respect to the preliminary investigation launched in 2015 by the Specialized Unit for the Search for Missing Persons and clarifies that the investigation was not launched in response to her daughter's disappearance but instead following the disappearance of 43 students on 26 and 27 September 2014. The author argues that the steps taken as part of that preliminary investigation are not specifically related to the search for her daughter and do not take into account the particular circumstances of her case, the existence of a pattern of disappearances of women in Iguala, and the history of domestic violence. The author points out that the inspection of her home was conducted almost four years after her daughter's disappearance and that the steps to search for her daughter referred to by the State party were taken between April and October 2017, seven years after her disappearance. With respect to the statement taken from her daughter's former partner on 24 July 2018, which was cited by the State party, the author clarifies that no questions were asked about the threats or domestic violence directed against

her daughter or about her disappearance. The author notes that, during the preliminary investigation, statements were not taken from Humberto Velázquez Delgado or his son, despite the fact that the author had given several statements describing the threats made by those individuals, their controlling behaviour and the surveillance they had carried out.

5.4 With respect to the preliminary investigation launched on 24 December 2019 by the Office of the Special Prosecutor for the Investigation of Enforced Disappearances, referred to by the State party in its observations, the author notes that the investigation was launched after she had filed the application for amparo, the amparo court's ruling of 9 November 2018, and the two non-compliance decisions of 22 August 2019 and 4 December 2019. Although the State party indicated in its observations that the investigation would be conducted in a specialized and gender-differentiated manner, the author alleges that the State party did not specify which specific search and investigation measures taken by the Prosecution Service would incorporate a gender perspective. The author maintains that the investigators do not have a theory about what happened, and no one has been prosecuted, arrested or tried for her daughter's disappearance. Consequently, the Prosecution Service has not complied with the amparo judgment of 9 November, over two years after it was handed down. The author also notes that, on 30 October 2020, the amparo court ruled, once again, that there was non-compliance with the amparo judgment because the Prosecution Service had failed to take steps to investigate the history of violence directed at her daughter.

5.5 Regarding the actions of the Executive Commission for Victim Support referred to by the State party, the author maintains that they are not relevant to the facts reported to the Committee; her complaint is not based on the failure to recognize her as a victim, but on the omissions in the search for her daughter and the investigation into her disappearance. With regard to the actions of the National Institute for Women, the author notes that these actions will be carried out in the future and have yet to be carried out. In addition, the author notes that neither of these two entities is responsible for searching for disappeared persons or investigating crimes.

5.6 In response to the State party's argument that the present communication is inadmissible because all domestic remedies have yet to be exhausted, on the basis that the author would have the possibility of filing an appeal or a new application for amparo, the author argues that this response does not refer to any of the facts that have already occurred, but to future decisions by the Prosecution Service or hypothetical future events. The author argues that the requirement, under article 4 of the Optional Protocol, to exhaust domestic remedies refers to events that have already occurred. The author argues that the remedies of amparo and appeals do not replace criminal proceedings as the available, adequate and effective remedy for investigating her daughter's disappearance.

5.7 The author contends that, in relation to the facts reported to the Committee, she has exhausted all available and relevant domestic remedies before the Office of the Attorney General of the State of Guerrero since the day of her daughter's disappearance in 2012, and not since 2017, as implied by the State party. In view of the omissions of that Office, the author reported her daughter's disappearance, on several occasions, to various federal prosecution agencies. Given the history of domestic violence and the pattern of disappearances of women in Iguala, the author requested that her daughter's disappearance be investigated incorporating a gender perspective. To date, she has not received a response to her requests to the Prosecution Service. The author recalls that she also submitted a complaint to the National Human Rights Commission and notes that the proposals made by the Commission in response to her complaint have not been complied with to date. The author alleges that, in view of the above, the criminal law proceedings under way since 2012 have been unreasonably prolonged, have proved ineffective and are unlikely to bring effective

relief. Moreover, the repeated failure of the Prosecution Service to comply with the amparo judgment has shown that the remedies referred to by the State party are ineffective in bringing effective relief in the particular circumstances of this case. The author requests, therefore, that the Committee declare the communication admissible.

5.8 With regard to the State party's observations on the merits of the communication, the author argues that the State party did not submit any observations on the merits of the facts reported to the Committee, namely, the lack of immediate action by the Iguala Prosecution Service, the lack of action by the Office of the Special Prosecutor for Violent Crimes against Women and Trafficking in Persons and its decision not to investigate the events, and the absence of a gender perspective in the steps taken by the Office of the Assistant Attorney General for the Investigation of Organized Crime. With regard to this last point and the actions of the Office of the Assistant Attorney General, the author complained in her communication that the absence of a gender perspective was due to the actions of the public prosecutor, as well as the Federal Act on the Prevention of Organized Crime, which does not provide for the application of a gender perspective to the investigation of organized criminal offences committed against women. The author points out that the position of the Supreme Court that courts have a duty to conduct gender-responsive investigations, as noted by the State party in its observations, has not changed the current situation. The necessary measures, including legislative ones, to be adopted by the National Institute for Women do not yet exist, and the author argues that this structural omission affected the effectiveness of the investigation by the Office of the Assistant Attorney General. The inquiries referred to by the State party conducted in 2016 and 2017 by the Specialized Unit for the Search for Missing Persons were undertaken as part of the search for seven persons who disappeared in different circumstances, which did not allow for the application of a differential approach. The author alleges that these systematic failures, which go against due diligence, resulted in the ineffectiveness of the search for her daughter and the investigation into her disappearance. The author rejects the comments made by the State party in its observations and asserts that the ruling of the amparo court, which has been repeatedly disregarded, has failed to resolve the facts of the case reported to the Committee.

Proceedings of the Committee

Consideration of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee is to decide whether the communication is admissible under the Optional Protocol. In accordance with rule 72 (4), it must do so before considering the merits of the communication.

6.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the State party's argument that the communication ought to be declared inadmissible under article 4 (1) of the Optional Protocol for non-exhaustion of domestic remedies, because in the event that the author is dissatisfied with the enforcement of the amparo judgment, which found in her favour, she may submit a new application for amparo or appeal, remedies that have proved to be adequate and effective in her case. However, the Committee also notes the author's claim that she has exhausted all available domestic remedies since the day of her daughter's disappearance in 2012, and that the requirement under article 4 (1) of the Optional Protocol cannot refer to future or hypothetical decisions by the Prosecution Service, only to events that have already occurred. The Committee further notes the author's argument that the criminal proceedings under way since 2012 have been

unreasonably prolonged and that both these remedies and the remedies referred to by the State party have, in view of the repeated failure to comply with the amparo judgment, proved ineffective in bringing effective relief. The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.³ In this regard, the Committee notes that, despite the amparo judgment of 9 November 2018, which upheld the author's complaints, several decisions of non-compliance were issued with respect to the Prosecution Service for failing to comply with the judgment. The Committee also notes that the State party has admitted that compliance with the amparo judgment is still pending. Accordingly, and in the absence of an explanation from the State party as to how the remedies of amparo and/or appealing non-compliance with the amparo judgment would be effective, in practice, in bringing effective relief to the author, the Committee concludes that the domestic remedies referred to by the State party are unlikely to bring effective relief to the author. The Committee therefore considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from considering the present communication.

6.4 Having found no impediment to the admissibility of the communication, the Committee proceeds to its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, in accordance with article 7 (1) of the Optional Protocol.

7.2 The Committee takes note of the author's claim that her daughter's rights under articles 1 and 2 (c)–(f) of the Convention, read in conjunction with general recommendations No. 19, No. 28 and No. 35, have been violated, as the authorities failed to act immediately and diligently to search for her, from the time of her disappearance in October 2012, and to prevent and protect her from serious acts of gender-based violence. The Committee recalls that, in accordance with its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, States parties have a due diligence obligation to prevent, investigate, prosecute and punish acts of gender-based violence (para. 19).⁴ Where discrimination against women also constitutes an abuse of other human rights, such as the right to life and physical integrity in, for example, cases of domestic and other forms of violence, States parties are obliged to initiate criminal proceedings, bring the perpetrator or perpetrators to trial and impose appropriate penal sanctions (para. 34).⁵

7.3 The Committee also recalls its general recommendation No. 19 (1992) on violence against women, and general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, in which it addresses the question of whether States parties can be held accountable for the conduct of non-State actors, stating that “discrimination under the Convention is not restricted to action by or on behalf of Governments” and that “under general international law and specific human rights covenants, States may also be responsible

³ E.S. and S.C. v. United Republic of Tanzania (CEDAW/C/60/D/48/2013), para. 6.3; (I) L.R. v. Republic of Moldova (CEDAW/C/66/D/58/2013), para. 12.2; S.H. v. Bosnia and Herzegovina (CEDAW/C/76/D/116/2017), para. 7.3.

⁴ See H.H. et al. v. Georgia (CEDAW/C/80/D/140/2019), para. 7.3; S.H. v. Bosnia and Herzegovina (CEDAW/C/76/D/116/2017), para. 8.2.

⁵ Ibid.

for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation". The Committee further considers that impunity for such offences contributes significantly to the entrenchment of a culture of acceptance of the most extreme forms of gender-based violence against women in society, which feeds their continued commission.^{6,7} Such failures and omissions constitute human rights violations.

7.4 The Committee reiterates that gender-based violence against women constitutes discrimination as defined under article 1 of the Convention and takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.⁸ In this context, the Committee reiterates that disappearances of women are one of the most brutal manifestations of gender-based violence, which is violence that is directed against a woman because she is a woman or violence that affects women disproportionately.⁹ The Committee emphasizes that disappeared women suffer particular types of harm because of their gender and are disproportionately subjected to sexual violence and other forms of gender-based violence.¹⁰

7.5 The Committee takes note of the State party's claims that it conducted the investigation and search for the author's daughter in accordance with its obligations under the Convention, noting the steps taken as part of the investigations carried out by various entities of the Prosecution Service since 2015. The Committee notes, however, that the State party has not provided information on actions that may have been taken prior to 2015, in particular what immediate actions were taken by the authorities upon being informed of the disappearance of the author's daughter. The Committee notes from the case file that the Office of the Attorney General of the State of Guerrero, which received the first report of the disappearance of the author's daughter, knew that Ms. Flores Román had allegedly been disappeared by a group of armed men who were looking for her specifically. Despite this situation, the Committee notes that the authorities did not, for instance, immediately take statements from the author and from her son's wife, who had been released, with a view to finding Ms. Flores Román, assessing the risk of serious acts of gender-based violence being committed against her, and preventing such acts from occurring. In this regard, the Committee considers that the due diligence obligation of States parties to prevent, investigate, prosecute and punish disappearances of women, under article 2 of the Convention, requires them to carry out an immediate search, without delay and with a gender perspective, ensuring that all stages of the search are conducted with a gender perspective by staff, including female staff, who have received proper training.¹¹

7.6 The Committee further considers that the case file contains information that suggests that persons linked to criminal organizations benefited from the authorization, support, acquiescence or omissions of the State party with respect to

⁶ General recommendation No. 19, para. 9; General recommendation No. 35, para. 2; (b).

⁷ General recommendation No. 19, para. 9; General recommendation No. 35, para. 2; (b).

⁸ General recommendation No. 35, para. 14;

⁹ See CEDAW/C/2005/OP.8/MEXICO, paras. 36 and 263; see also [CEDAW/C/MEX/CO/9](#), para. 23 (a); General recommendation No. 28, para. 19.

¹⁰ [A/HRC/WGEID/98/2](#), paras. 5 and 8; CED/C/MEX/FAI/1, paras. 42 and 47.

¹¹ General recommendation No. 28, para. 19; Guiding principles for the search for disappeared persons of the Committee on Enforced Disappearances ([CED/C/7](#)), principles 4 and 6; González et al. ("Cotton Field") v. Mexico, judgment of 16 November 2009, Series C No. 205, para. 283; Velásquez Paiz et al. v. Guatemala, judgment of 19 November 2015, Series C No. 307, para. 122.

the disappearance of the author's daughter.¹² Therefore, and in the light of the pattern of disappearances of women in the State of Guerrero and the prevailing impunity, the Committee considers that the State Party is responsible in the present incident of the alleged enforced disappearance.¹³ Thus, the Committee considers that the enforced disappearance of Ms. Flores Román, although initially not directly attributable to the State party, could be attributed to it because of its lack of due diligence in preventing the violation and addressing it in accordance with the requirements imposed by international law.¹⁴

7.7 Accordingly, the Committee finds that the State party violated Ms. Flores Román's rights under article 2 (c)–(e) of the Convention, read in conjunction with article 1 of the Convention and in the light of general recommendations No. 19, No. 28 and No. 35.

7.8 The Committee notes the author's allegation that her daughter's rights under articles 1, 2 (b)–(f), 5 (a) and 15 (1) of the Convention, read in conjunction with general recommendations No. 19, No. 28, No. 33 and No. 35, updating general recommendation No. 19, have been violated as a result of: (a) the decision not to investigate the events as acts of gender-based violence; (b) the stereotyping that affected how the investigation was approached; (c) the absence of provisions in criminal law guaranteeing the gender-responsive investigation of acts of organized crime; and (d) the systematic failures and ineffectiveness of the investigation into her daughter's disappearance. The Committee also takes note of the State party's statement that the Supreme Court ruled that all courts must dispense gender-responsive justice and that judges must challenge preconceived stereotypes in the law about gender roles and take into consideration situations of gender-based violence, discrimination or vulnerability in order to ensure effective and equal access to justice. The Committee notes that the State party maintains that the author's complaint has been resolved, given that, following the amparo judgment, the Office of the Attorney General of the Republic has been handling the author's case.

¹² The Committee takes note, inter alia, of: the conclusions of the National Human Rights Commission (CNDH/1/2015/1427/Q) of 28 March 2019 that public officials from the Office of the Attorney General of the State of Guerrero and the Office of the Assistant Attorney General for the Investigation of Organized Crime might be administratively and/or criminally liable for having violated the principles of legality, integrity, loyalty, impartiality and efficiency; the report of the federal police of 15 April 2014 stating that Humberto Velázquez Delgado, an investigative police officer with the Office of the Attorney General of the State of Guerrero, was allegedly a member of an organized criminal group; and the fact that the Office of the Attorney General of the Republic stated that organized criminal groups in the State of Guerrero acted with the support or coordination of the local police in Iguala, State of Guerrero (in the decision of non-compliance with the amparo judgment of the Seventh District Court for Amparo in Criminal Matters of Mexico City of 22 August 2019, p. 106).

¹³ International Convention for the Protection of All Persons from Enforced Disappearance, article 2; see CED/C/MEX/VR/1 (Findings), para. 40.

¹⁴ European Court of Human Rights, *Taniş and others v. Turkey*, application No. 65899/01, 2 August 2005, paras. 206–210; *Er and others v. Turkey*, application No. 23016/04, 31 July 2012, paras. 66–79; *Meryem Çelik and others v. Turkey*, application No. 3598/03, 16 April 2013, paras. 48–60; *Imakayeva v. Russia*, application No. 7615/02, 9 November 2006, paras. 139–143; *Alikhanov v. Russia*, application No. 17054/06, 28 August 2018, paras. 70–75; *Tsakoyevy v. Russia*, application No. 16397/07, 2 October 2018, paras. 115–121. See also Human Rights Committee, *Molina Arias et al. v. Colombia* (CCPR/C/114/D/2134/2012) and *Padilla García et al. v. Mexico* (CCPR/C/126/D/2750/2016); *Valdez Cantú et al. v. Mexico* (CCPR/C/127/D/2766/2016). See also Inter-American Court of Human Rights, *Pueblo Bello Massacre v. Colombia*, judgment of 31 January 2006, Series C No. 140, para. 123; *González et al. ("Cotton Field") v. Mexico*, judgment of 16 November 2009, Series C No. 205, para. 283; *Velásquez Paiz et al. v. Guatemala*, judgment of 19 November 2015, Series C No. 307, para. 122.

7.9 The Committee notes that the Office of the Special Prosecutor for Violent Crimes against Women and Trafficking in Persons declared that it lacked jurisdiction to investigate the enforced disappearance of Ms. Flores Román, claiming that the events under investigation could not be considered acts of violence against women based on her gender or status as a woman.¹⁵ The Committee also notes that the Office of the Special Prosecutor referred the investigation to the Office of the Assistant Attorney General for the Investigation of Organized Crime due to the alleged involvement of members of organized criminal groups, but did not recommend working together or note the need to conduct the investigation with a gender perspective.¹⁶ While the Office of the Assistant Attorney General may be the competent entity under the law of the State party, and without commenting on the Office of the Special Prosecutor's declaration that it lacked jurisdiction, the Committee finds that the assessment of the facts by the Office of the Special Prosecutor disregards the definition of gender-based violence against women under the Convention, namely violence directed against a woman because she is a woman or that affects women disproportionately.¹⁷ The Committee finds that the assessment did not consider the history of domestic violence and other forms of gender-based violence against women experienced by Ms. Flores Román, as well as the general context of disappearances of women in the State party.¹⁸ With regard to the author's claim that the investigation conducted by the Office of the Assistant Attorney General did not incorporate a gender perspective, the Committee notes that the State party admits that the Office was slow to respond to the author's request and that the Office referred the matter to the Office of the Assistant Attorney General for Human Rights, Crime Prevention and Community Service to determine its competence in the case. The Committee reiterates that all entities responsible for searching for women victims of enforced disappearances have an obligation to conduct searches with a gender perspective; in the present case, that obligation should not have been limited to the Office of the Special Prosecutor as the specialized entity for addressing violent crimes against women.

7.10 Regarding the author's claim that the Federal Act on the Prevention of Organized Crime lacks provisions prescribing a differential approach when the victims are women, the Committee takes note of the information provided by the State party, namely that the Supreme Court of Justice of the Nation has established that all courts must dispense gender-responsive justice, in accordance with the judgment of the Inter-American Court of Human Rights in the case of *González et al. v. Mexico* (para. 4.7). The Committee also notes that the State party has standards requiring searches for disappeared women to be conducted with a gender perspective, such as the Alba Protocol and various provisions of the General Act on Enforced Disappearance of Persons, Disappearance Perpetrated by Individuals and the National Missing Persons System of 2017. It also notes that, in the present case, several amparo judgments ordered the Prosecution Service to conduct the search for the author's daughter and investigation into her enforced disappearance in accordance with those standards. The Committee notes that the National Human Rights Commission also reported shortcomings in the search and investigation measures taken in respect of the enforced disappearance of the author's daughter. However, the Committee also notes that the State party has not provided information on the normative gap in the Federal Act on the Prevention of Organized Crime highlighted by the author. The Committee considers that, in practice, the absence of a gender perspective in the Federal Act on the Prevention of Organized Crime was an obstacle, in the present

¹⁵ Notice of lack of jurisdiction issued by the Office of the Special Prosecutor for Violent Crimes against Women and Trafficking in Persons, 14 March 2014, p. 14.

¹⁶ *Ibid.*, p. 18.

¹⁷ General recommendation No. 19, para. 6.

¹⁸ See also [CEDAW/C/MEX/CO/9](#), para. 23 (d); [CED/C/MEX/VR/1](#).

case, to a gender-responsive investigation of the enforced disappearance of the author's daughter and constitutes a violation of articles 2 (f) and 15 (1) of the Convention.

7.11 Despite the State party's normative framework guaranteeing gender-responsive searches and investigations of enforced disappearances (see para. 7.10 above), the various amparo judgments in the present case ordering the application of those standards, and the recommendations of the National Human Rights Commission, the Committee notes that these have not adequately addressed the violations of the rights of the author's daughter.

8. In accordance with article 7 (3) of the Optional Protocol, the Committee is of the view that the facts before it reveal a violation of Ms. Flores Román's rights under articles 1, 2 (b)–(f), 5 (a) and 15 (1) of the Convention in the light of general recommendations No. 19, No. 28, No. 33 and No. 35.

9. The Committee makes the following recommendations to the State party:

(a) Concerning Ms. Flores Román and the author of the communication:

(i) Ensure the coordination and participation of all levels – federal, State and municipal – and develop a comprehensive strategy for conducting an exhaustive search for Ms. Flores Román that determines the actions to be carried out in an integrated, efficient and coordinated manner, and ensure that these actions are accompanied by the necessary resources, protocols and procedures;

(ii) Ensure that this strategy has a gender and intersectional perspective and that all stages of the search are conducted with a gender perspective by staff, including female staff, who have received proper training;

(iii) Ensure that an exhaustive and impartial investigation into the enforced disappearance of Ms. Flores Román is carried out promptly, thoroughly and independently, taking into account the context in which it occurred and with special emphasis on generating scenarios and lines of investigation that take into account motivations potentially related to gender. Identify those responsible and thereafter take appropriate measures to prosecute them and have them sanctioned;

(iv) Exhaustively investigate and punish the negligence and collusion of the public authorities involved in the enforced disappearance of Ms. Flores Román;

(v) Ensure regular and timely access to information on the investigation into the enforced disappearance of Ms. Flores Román for the author and her family;

(vi) Take the necessary measures to protect and preserve the life and personal integrity of the author of the communication so that she can carry out the activities related to the search for her relative without being subjected to acts of intimidation, violence and harassment;

(vii) Ensure the release of Ms. Flores Román if she is still alive. In the event that she has died, return her remains to her family in a dignified and respectful manner;

(viii) Provide the author with comprehensive reparation, including adequate compensation, access to the truth and an apology, commensurate with the gravity and the ongoing consequences of the violations of the rights of the author and her daughter;

(b) In general:

(i) Eradicate all structural causes of impunity and put an end to practices that hinder access to justice. In this sense, ensure that all institutions making up the

system for the administration of justice and entities responsible for searching for disappeared persons and conducting investigations, at the local, State or federal level, conduct searches with a gender perspective and observe the Alba Protocol and the Protocol for the Investigation of the Crime of Femicide;

(ii) Provide mandatory training on these protocols, as well as training on the Convention, the Optional Protocol and the jurisprudence and general recommendations of the Committee, in particular general recommendations No. 19, No. 28, No. 33 (2015) on women's access to justice, and No. 35;

(iii) Adopt and implement a national policy to prevent and eradicate disappearances of women which includes due diligence standards, a differentiated approach and a human rights-based approach as cross-cutting components. The policy should be comprehensive, address and combat the causes of enforced disappearances of women and be aimed at ensuring non-repetition.

10. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and submit to the Committee, within six months, a written response, including information on any action taken in the light of those views and recommendations. The State party is requested to publish the present views and recommendations and to have them widely disseminated in order to reach all relevant sectors of society.
