



# 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. 3066/2017\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Omaira del Carmen Ramírez (represented by counsel, Marino Alvarado Betancourt and Jessica Duhan Botero)
<i>Alleged victims:</i>	The author, G.A.C.R. and G.A.C.R.
<i>State party:</i>	Bolivarian Republic of Venezuela
<i>Date of communication:</i>	28 May 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 11 December 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	25 October 2023
<i>Subject matter:</i>	Forced eviction of a single mother and her two minor children
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Home; cruel, inhuman and degrading treatment or punishment; access to the courts; effective remedy
<i>Articles of the Covenant:</i>	2 (3), 7, 14 (1), 15 (1), 17 (1) and 24 (1)
<i>Articles of the Optional Protocol:</i>	5 (2)

1. The author of the communication is Omaira del Carmen Ramírez, a national of the Bolivarian Republic of Venezuela, born on 8 June 1977. The author is submitting the communication on behalf of herself and her children, G.A.C.R., born on 18 November 2004, and G.A.C.R., born on 8 August 2001, both nationals of the Bolivarian Republic of

\* Adopted by the Committee at its 139th session (9 October–3 November 2023).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

\*\*\* An individual opinion by Committee member Hernán Quezada Cabrera (concurring), a joint opinion by Committee members Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Teraya Koji and Carlos Gómez Martínez (partially concurring) and a joint opinion by Committee members Yvonne Donders, Laurence R. Helfer, José Manuel Santos Pais and Tijana Šurlan (partially dissenting) are annexed to the present Views.



Venezuela. The author claims that the State party has violated her and her children's rights under articles 2, 7, 14, 15, 17 and 24 of the Covenant. The author is represented by counsel. The Optional Protocol entered into force for the State party on 10 August 1978.

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

2.1 The events described in the communication took place in the context of people's liberation operations carried out by the Venezuelan Government through the Ministry of People's Power for Internal Relations, Justice and Peace. People's liberation operations are police and military operations aimed at occupying areas and pieces of land inhabited by poor communities, such as the working-class housing of the Great Venezuelan Housing Mission, on the pretext of searching for individuals involved in paramilitary activities, drug trafficking, robbery or small-scale smuggling. The President of the State party has justified people's liberation operations on the grounds that they have led to the discovery of "sexual slavery, drug trafficking and inappropriate links with people who hate this country". During these operations, massive arrests and raids have been carried out without a court order, resulting in the permanent eviction of families from their homes and even the destruction of their homes in the case of poor communities. People's liberation operations have entailed massive human rights violations, particularly against the most vulnerable segments of the population, and have been denounced, for example, by the Venezuela Programme Education-Action on Human Rights and the International Commission of Jurists.

2.2 The author and her two children had been living in apartment No. P-2, building 25-E, in the Caribe housing development located in Caraballeda, State of Vargas, Bolivarian Republic of Venezuela, since 5 July 2013. This apartment was allocated to the author by the authorities of the Ministry of People's Power for Habitat and Housing on the same day that she arrived in the neighbourhood. Previously, the family had lived for four years in two temporary housing complexes in Caracas after their home of 25 years in La Guaira was flooded by heavy rain. When she arrived at building 25-E on 5 July 2013, the author had to sign a document confirming the handover of the apartment but did not receive a document confirming the ownership or allocation of the property. The author claims that, at that time, she was promised that the allocation of the property would be made official in a document that she would receive at a later date. This promise was never fulfilled. Failure to make official the allocation of property by means of a public or private document is a common practice throughout the country and contributes to the vulnerability of families, as the Government uses it to evict families without initiating any kind of proceedings.

2.3 As the person to whom the apartment had been allocated, the author covered the cost of basic services and the monthly fee for the maintenance of the apartment building, and contributed to its general upkeep, as all its residents were required to do.

2.4 On 23 and 24 August 2015, a people's liberation operation was carried out by officers of the Vargas State police force and the Bolivarian National Guard in the Caribe housing development where the author and her children resided. They broke down the front door of the apartment where the author lived with her minor children and, in her absence, entered the property. On returning home, the author was ordered by the officers, who used a threatening and humiliating tone, to vacate the property within 20 minutes. After the eviction, officers of the police and the Bolivarian National Guard informed the author that the eviction was taking place due to the "misconduct" of one of her children, Anthony Jesús Ramírez, who was 25 years of age, did not live with the author and had no criminal record. The eviction was carried out without due process of law and without giving the author the opportunity to apply for an effective remedy to prevent it. As the police and military officers did not find anything illegal in the author's home, they did not initiate any criminal proceedings against her. This people's liberation operation was reported on by different media outlets<sup>1</sup> and also via the personal Twitter account of the Minister of People's Power for Internal Relations, Justice and Peace.

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<sup>1</sup> The author submits that the people's liberation operation was reported on by the newspapers *Correo del Orinoco*, *La Verdad de Vargas* and *Ultimas Noticias*.

2.5 After the eviction, the author and her children were not offered alternative housing or shelter by State officials and had no choice but to depend on the generosity of neighbours. Finally, that night, they were taken in by a relative who also helped them to carry some of their belongings. This violent eviction caused the living conditions of the author and her children to deteriorate and affected their psychological state, as they returned to a situation of uncertainty in which they could not enjoy their human rights.

2.6 On 19 February 2016, the author, with legal assistance from the Venezuela Programme Education-Action on Human Rights, submitted an application for *amparo* to the Constitutional Chamber of the Supreme Court against the Minister of People's Power for Internal Relations, Justice and Peace for having violated her right to decent housing established in article 82 of the Constitution through de facto means and violence. The author denounced the violence with which the State party officials had carried out the eviction, the lack of a search warrant and their failure to offer her alternative housing. The author also denounced the deterioration in the living conditions and psychological state of her two minor children, and the violation by the State party of the principle of the best interests of the child. In her written submission, the author requested the return of her apartment or, failing that, a new similar apartment in the State of Vargas or in Caracas. On 24 February 2016, the Constitutional Chamber of the Supreme Court acknowledged receipt of the application for *amparo* submitted by the author and assigned it a registration number.

2.7 The remedy of *amparo* is the only appropriate remedy in a case such as that of the author. Article 23 of the *Amparo* (Constitutional Rights and Guarantees) Act of 27 September 1988 sets a maximum time limit of 48 hours within which the judge must either restore the legal situation that existed prior to the violation or order the accused authority to report on the alleged violation. The application for *amparo* was submitted within the established legal deadline. Once the public *amparo* proceedings have taken place, the judge must rule within 24 hours. Having not received any response from the Supreme Court, the author filed petitions on 7 April 2016, 5 May 2016 and 23 May 2016 requesting the Constitutional Chamber of the Supreme Court to rule. As at the date of the present communication, no response has been received from the Supreme Court.

2.8 The remedy of *amparo* is swift in nature and is based on the principle of guaranteeing expeditious justice. The author argues that it is the appropriate remedy by which to demand the restoration of violated rights. Since the application for *amparo* was submitted to the Constitutional Chamber, it is not possible to appeal to or to petition a higher court. The author claims that she has exhausted all available and effective domestic remedies.

### Complaint

3.1 The author claims that she and her children have been victims of forced eviction in violation of the right not to be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence enshrined in article 17 (1) of the Covenant. She alleges that they were violently evicted from their home by police and military officers, who gave them 20 minutes to leave, and that they were not given the opportunity to relocate to another dwelling. She claims that the officers did not show her any search warrant and told her only that the eviction was due to alleged "misconduct" by one of her older children. The author argues that the Committee, in its jurisprudence, has held that raids of homes, even if authorized by national law, may still be arbitrary.<sup>2</sup> She notes that, according to the Committee, raids of private homes by military personnel without search warrants constitute a form of unlawful interference with the home.<sup>3</sup> The author also highlights the jurisprudence of the Committee on Economic, Social and Cultural Rights on forced evictions, according to which all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, which is a practice that can lead to violations of the right to non-interference with privacy, family and home.<sup>4</sup>

<sup>2</sup> *Rojas García v. Colombia* (CCPR/C/71/D/687/1996), para. 10.3.

<sup>3</sup> *Coronel et al. v. Colombia* (CCPR/C/76/D/778/1997), para. 9.7.

<sup>4</sup> General comment No. 7 (1997), paras. 1, 4 and 16.

3.2 The author alleges that her eviction, during which she was not given the opportunity to relocate to another dwelling, left her and her minor children in a situation of extreme precariousness and uncertainty, which has caused them suffering and anguish. The author therefore considers that she and her children have been subjected to cruel, inhuman and degrading treatment, in violation of article 7 of the Covenant. The author argues that the Committee has clarified that the prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering,<sup>5</sup> and that it has also held that, in certain circumstances, forced eviction can cause inhabitants suffering in violation of the prohibition in article 7 of the Covenant.<sup>6</sup>

3.3 The author alleges that the reason given by the authorities for evicting her from her home was the “misconduct” of one of her adult children, who had no criminal record. The author therefore considers that her eviction constituted a punitive measure, imposed unlawfully and arbitrarily without the benefit of any legal proceedings under article 14 of the Covenant. The author argues that article 15 (1) of the Covenant stipulates that “no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed”. The author also submits that the Committee on Economic, Social and Cultural Rights has held that forced evictions as a punitive measure are incompatible with the Covenant. The author therefore considers that the eviction constituted a violation of article 7 (1), read in conjunction with article 15 (1), of the Covenant.

3.4 The author claims that the State party has violated her rights under articles 2 (3) and 14 (1) of the Covenant, as the authorities did not grant her the opportunity to challenge the eviction by means of a legal remedy. The author also alleges that her application for *amparo* is still pending resolution, in blatant disregard of the legally established procedure and timeline. The author therefore considers that the State party has failed to guarantee the right of the author and her minor children to an effective remedy and to have their rights adjudicated upon by a court of law, in violation of article 2 (3) and article 14 (1) of the Covenant.

3.5 The author claims that the forced eviction of her two minor children has left them in a situation of extreme precariousness and vulnerability and that the State party breached its obligation under article 24 of the Covenant to provide them with measures of protection.

3.6 The author contends that she has exhausted domestic remedies, since the only available remedy was that of *amparo*, for which she applied in a timely manner and in accordance with the requirements of the law. The author’s petitions for a ruling on her application for *amparo* have been unsuccessful. The author alleges that the Constitutional Chamber of the Supreme Court has failed to adhere to the time limits established by article 27 of the Constitution, which has resulted in an undue delay in the processing of the remedy and a denial of justice.

#### **Lack of cooperation by the State party**

4. On 20 December 2018, 18 July 2019 and 1 October 2020, the State party was invited to submit its observations on the admissibility and merits of the communication. The Committee regrets the failure of the State party to provide any information with regard to the admissibility or the merits of the author’s claims. It recalls that article 4 (2) of the Optional Protocol obliges States parties to examine in good faith all allegations brought against them and to make available to the Committee all the information at their disposal. In the absence of a reply from the State party, due weight must be given to the authors’ allegations, to the extent that they are substantiated.

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<sup>5</sup> General comment No. 20 (1992), para. 5.

<sup>6</sup> *Chiti v. Zambia* (CCPR/C/105/D/1303/2004), para. 12.4.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

5.1 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.

5.2 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.

5.3 The Committee recalls that, in accordance with article 5 (2) (b) of the Optional Protocol, it will not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee recalls that, although there is no obligation to exhaust domestic remedies if they have no prospect of being successful, authors of communications must exercise due diligence in the pursuit of available remedies. It notes that mere doubts or assumptions about the effectiveness of domestic remedies do not absolve authors from exhausting them.<sup>7</sup> In the present case, the Committee notes that the author submitted an application for *amparo* on behalf of herself and her two minor children, in which she alleged the violation of their right to decent housing and requested immediate redress for this violation. It also notes that, as she did not receive a response within the time limits established by the *Amparo* (Constitutional Rights and Guarantees) Act,<sup>8</sup> the author filed petitions on three occasions, requesting that the Constitutional Chamber of the Supreme Court rule on her application for *amparo* but that, to date, she has not received a response. Accordingly, the author's claims under articles 2 (3), 7, 14 (1), 17 (1) and 24 of the Covenant would have been raised in substance in her application for *amparo*, which has not been effective. The Committee therefore takes the view that article 5 (2) (b) of the Optional Protocol is not an obstacle to the admissibility of the communication in relation to these claims.

5.4 However, the Committee notes that, in relation to the claims relating to the alleged violations of the rights of the author and her minor children under article 15 (1) of the Covenant, the author has not submitted any information to show that these claims were raised in substance at the national level in the application for *amparo* or before the national courts. Accordingly, the Committee declares the author's claim under article 15 (1) of the Covenant inadmissible under article 5 (2) (b) of the Optional Protocol.

5.5 The Committee takes note of the author's allegations under articles 14 and 2 (3) of the Covenant, which refer to the fact that the authorities did not grant her the opportunity at any time to challenge, by means of a legal remedy, her eviction from the property that had been allocated to her, or to have her rights adjudicated upon by a court. It also notes her allegation that the application for *amparo* that she submitted is still pending resolution, in blatant disregard of the legally established timeline. The Committee recalls its jurisprudence according to which the provisions of article 2, which set forth general obligations for States parties, cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol. It also recalls that the notion of "rights and obligations in a suit at law" in

<sup>7</sup> See, inter alia, *V.S. v. New Zealand* (CCPR/C/115/D/2072/2011), para. 6.3; *García Perea and García Perea v. Spain* (CCPR/C/95/D/1511/2006), para. 6.2; and *Zsolt Vargay v. Canada* (CCPR/C/96/D/1639/2007), para. 7.3.

<sup>8</sup> Article 22 of the *Amparo* (Constitutional Rights and Guarantees) Act establishes the following: "The court that receives the application for *amparo* shall have the power to restore the legal situation that existed prior to the violation, disregarding considerations of mere form and without the need to conduct any type of summary investigation before doing so. In such cases, the writ of *amparo* must be reasoned and be based on evidence that gives rise to a serious presumption of violation or of threat of violation". Article 23 establishes that: "If the judge chooses not to immediately restore the legal situation that existed prior to the violation, in accordance with the previous article, he or she shall order the authority, entity, social organization or individuals accused of violating or threatening the constitutional right or guarantee to report, within 48 hours of having received the relevant notification, on the alleged violation or threat that has given rise to the application for *amparo*. Failure to submit the corresponding report shall be understood as acceptance of the alleged acts".

article 14 (1) of the Covenant is based on the nature of the right in question rather than on the legal status of one of the parties or on the forum in which the right in question is to be adjudicated upon, depending on the legal system in force.<sup>9</sup> In this regard, it recalls, for example, that this notion applies to disputes related to the right to property,<sup>10</sup> and therefore considers that it also applies to eviction and forced eviction proceedings.<sup>11</sup> The Committee therefore considers that the author's claims under article 14 (1), read in conjunction with article 2 (3), concerning the lack of a legal remedy to challenge her eviction, are admissible under article 2 of the Optional Protocol.

5.6 The Committee considers that the author has sufficiently substantiated, for purposes of admissibility, her claims under articles 7, 17 (1), 24 and 14 (1), read in conjunction with article 2 (3), of the Covenant.

5.7 The Committee declares admissible the claims under articles 7, 17 (1), 24, and 14 (1), read in conjunction with article 2 (3), of the Covenant and proceeds with its consideration of the merits.

#### *Consideration of the merits*

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

6.2 The Committee notes the author's allegation that she and her minor children have been the victims of a forced eviction, which constituted a violation of their right not to be subjected to arbitrary or unlawful interference with their home, protected under article 17 (1) of the Covenant. It notes the author's allegation that the police and military officers who violently evicted them from their home did not show her any search warrant, stating only that the eviction was due to the alleged "misconduct" of one of her adult children, and did not offer them any opportunity to relocate to another dwelling. The Committee recalls that the term "home", used in article 17 of the Covenant, is to be understood to indicate the place where a person resides or carries out his or her usual occupation.<sup>12</sup> In the present communication, the Committee considers that it is undisputed that the property that was allocated to the author on 5 July 2013 was her "home" and that of her minor children within the meaning of article 17 of the Covenant.

6.3 The Committee must then determine whether the forced eviction of the author and her minor children from their home on 24 August 2015 by police and military officers constituted a violation of article 17 of the Covenant. The Committee considers that there is no doubt that the forced eviction entailed interference with the home of the author and that of her children. The Committee recalls that, under article 17 of the Covenant, any interference with the home must not only be lawful but also not be arbitrary. The Committee considers that, in accordance with its general comment No. 16 (1988) on the right to respect for privacy, family, home and correspondence and for honour and reputation, the concept of arbitrariness referred to in article 17 of the Covenant is intended to guarantee that even interference provided for by law is in accordance with the provisions, aims and objectives of the Covenant and, in any event, is reasonable in the particular circumstances.<sup>13</sup> In the present case, the Committee notes that the raid on the home of the author and her minor children, and their subsequent forced eviction, were carried out in the context of people's liberation operations aimed at combating organized crime. It notes that the police and military officers did not present the author with a search warrant or any official or legal document justifying the forced eviction as part of a people's liberation operation prompted by the alleged "misconduct" of one of her

<sup>9</sup> Human Rights Committee, *Y.L. v. Canada*, communication No. 112/1981, paras. 9.1 and 9.2.

<sup>10</sup> Human Rights Committee, *Czernin and Czernin v. Czech Republic*, communication No. 823/1998, para. 6.7.

<sup>11</sup> See, for example, Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 15.

<sup>12</sup> General comment No. 16 (1988), para. 5. See also *I Elpida and Kalamiotis v. Greece* (CCPR/C/118/D/2242/2013), para. 12.3.

<sup>13</sup> General comment No. 16 (1988), para. 4. See also *Vojnović et al. v. Croatia* (CCPR/C/95/D/1510/2006), para. 8.5; and *Rojas García v. Colombia*, para. 10.3.

adult children, who did not live with her. The Committee also notes that, as the police and military officers did not find anything illegal in the author's home, they did not initiate any criminal proceedings against her or her adult son. The Committee considers that, by carrying out the forced eviction of the author and her minor children without the benefit of any legal proceedings and without due process of law, and without taking due account of the consequences, such as the risk of leaving the author and her children homeless in a situation where adequate alternative housing would not have been immediately available to them, the State party arbitrarily interfered with the home of the author and her minor children and thus violated their rights under article 17 of the Covenant.

6.4 The Committee notes the author's allegation that the forced eviction to which she and her minor children were subjected, without being given the opportunity to relocate, left them in a situation of extreme precariousness and uncertainty, which has caused them suffering and anguish amounting to cruel, inhuman and degrading treatment, in violation of article 7 of the Covenant. The Committee recalls its general comment No. 20 (1992), in which it does not consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment, and maintains that the distinctions depend on the nature, purpose and severity of the treatment applied. The Committee has also considered that the prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim.<sup>14</sup> For example, the Committee has qualified certain attacks on the family home and evictions involving damage to property,<sup>15</sup> or the expulsion of a single mother and her three minor children to a country where they would face homelessness and destitution,<sup>16</sup> as cruel, inhuman and degrading treatment in violation of article 7 of the Covenant.

6.5 In the present case, the Committee notes that the police and military forces violently raided the home of the author and her minor children and, in a threatening manner, ordered them to vacate the property in only 20 minutes without offering them any alternative housing or providing for their needs. The Committee notes, in particular, the presence of minor children, who were 10 and 14 years of age at the time of the events, and their particular vulnerability and the disproportionate impact on them of a raid and violent eviction, and of the absence of alternative housing.<sup>17</sup> Taking into account the circumstances of the forced eviction of the author and her children, and with reference to the findings in paragraph 6.3 above, the Committee considers that the forced eviction constituted an arbitrary act of a punitive nature for the alleged "misconduct" of the author's adult son, which caused her and her minor children anguish and mental suffering. The Committee concludes that such an act amounts to a violation of article 7 of the Covenant.

6.6 In view of the above, the Committee will not consider separately the claims relating to the violation of article 24 of the Covenant.

6.7 The Committee notes the author's claim under article 2 (3) and article 14 (1) of the Covenant that she was unable to challenge her eviction by means of an effective remedy or have her rights adjudicated upon by a court of law. It also notes her allegation that the application for *amparo* that she submitted is still pending resolution, in blatant disregard of the legally established procedure and timeline. The Committee recalls its general comment No. 32 (2007), paragraph 9 of which states that article 14 encompasses the right of access to the courts in cases of determination of criminal charges and rights and obligations in a suit at law. With reference to the findings in paragraph 6.3, the Committee notes that the eviction of the author and her minor children was carried out in the absence of an order issued by a court under due process of law. It notes that, as a result, the author never had the opportunity to petition a court to challenge the eviction and assert her rights. The Committee also notes that the author subsequently filed an application for *amparo* in an attempt to remedy the violations of her rights and those of her minor children that had taken place as a result of the forced eviction. The Committee notes that the author filed additional petitions requesting a

<sup>14</sup> General comment No. 20 (1992), paras. 4 and 5.

<sup>15</sup> *Aouali et al. v. Algeria* (CCPR/C/109/D/1884/2009 and CCPR/C/109/D/1884/2009/Corr.1), paras. 7.7 and 7.8.

<sup>16</sup> *Jasin v. Denmark* (CCPR/C/114/D/2360/2014), para. 8.9; and *I Elpida and Kalamiotis v. Greece*.

<sup>17</sup> Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 10.

response to the application for *amparo* that she had submitted, but to no avail. The Committee recalls that States parties must ensure that individuals have accessible, effective and enforceable remedies to uphold rights under the Covenant. The Committee refers to its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, paragraph 15 of which affirms that States parties must establish appropriate judicial and administrative mechanisms for addressing claims of rights violations. In the present case, the information before the Committee indicates that the author did not have access to an effective remedy that would have enabled her to challenge the eviction to which she and her children were subjected and to obtain redress for the harm suffered. In these specific circumstances, the Committee finds that the author's rights under article 14 (1), read in conjunction with article 2 (3), have been violated.

7. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the rights of the author and her minor children under articles 7, 17 (1) and 14 (1), read in conjunction with article 2 (3), of the Covenant.

8. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is obligated to provide the author and her two children with adequate compensation, and to offer them the opportunity to relocate to adequate alternative housing, in consultation with them. The State party is also under an obligation to prevent similar violations from occurring in the future.

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



## Annex I

[Original: Spanish]

### **Individual opinion of Committee member Hernán Quezada Cabrera (concurring)**

1. I fully agree with the Committee's finding that the State party violated the rights of the author and her two minor children under articles 7, 17 (1) and 14, read in conjunction with article 2 (3), of the Covenant, by raiding and forcibly evicting them from their home on 24 August 2015 without giving them the opportunity to relocate to alternative housing.

2. However, as pointed out by some members of the Committee during the examination of the communication, the Committee should have provided adequate reasoning for the decision contained in paragraph 6.6 of its Views – that is, “in view of the above”, “the claims relating to the violation of article 24 of the Covenant” will not be considered “separately” – since those claims had previously been declared admissible. In keeping with what was decided, and according to my own interpretation, the expression “the above” could be understood as referring to paragraph 6.5 of the Views, in which the Committee found a violation of article 7 of the Covenant, since the forced eviction was an arbitrary act that caused the author and her minor children “anguish and mental suffering”. In my opinion, this would indicate that the facts described in connection with the violation of article 7 absorb those constituting a violation of article 24 of the Covenant. As this is merely an explanation put forward in my personal capacity, the implicit basis of the Committee's decision in paragraph 6.6 remains open to interpretation.

3. It is this lack of reasoning that has led me to draft this individual opinion in respect of the present case, especially in view of the importance of article 24 of the Covenant for the protection of the rights of the child. My intention in drafting this opinion is not to question the Committee's decision in paragraph 6.6 above, rather merely to point out that the decision should have been properly reasoned, even if only succinctly.<sup>1</sup>

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<sup>1</sup> In this regard, see, inter alia, the following judgments of the European Court of Human Rights, *Ezelin v. France*, 26 April 1991, para. 35; *Kudla v. Poland*, 26 October 2000, para. 146; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, 17 July 2014, para. 156; and *Mehmet Hatip Dicle v. Turkey*, 15 October 2013, para. 41.

## Annex II

[Original: English]

### **Joint opinion of Committee members Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Carlos Gómez Martínez and Teraya Koji (partially concurring)**

1. We differ from the treatment that the Committee gives to the complaint of a violation of article 24 of the Covenant. In effect, after having admitted the violation of the said precept for consideration on the merits, the Committee decided not to examine it separately (para. 6.6).

2. The Committee's decisions must be duly reasoned and this requires that, if it resolves not to examine a claim duly formulated by the author, it must also provide an appropriate explanation that sufficiently substantiates such an exclusion.

3. We therefore consider that paragraph 6.6 of the opinion could have been written in a formula similar to the following:

6.6. In the light of the foregoing, the Committee will not consider separately the claim of a violation of article 24 of the Covenant since the disproportionate impact and consequent distress and suffering inflicted on the children described in the preceding paragraph as constituting a violation of article 7 absorb the lack of protection in which the son and daughter of the author were left, which constitutes also the factual situation in relation to article 24

## Annex III

[Original: English]

**Joint opinion of Committee members Yvonne Donders,  
Laurence R. Helfer, José Manuel Santos Pais and Tijana  
Šurlan (partially dissenting)**

1. We agree with the Committee’s finding of a violation of articles 7, 17 (1) and 14 (1) of the Covenant, read in conjunction with article 2 (3). However, we conclude that the Committee should have also found a violation of the “measures of protection” clause of article 24 (1) of the Covenant.

2. The facts of this case reveal the State party’s flagrant disregard for the welfare and rights of the author’s minor children – aged 10 and 14 at the time of the events in question – who, together with their mother, were forcibly and summarily evicted from an apartment in a public housing estate by police and military officers of the State party. The authorities had allocated the apartment to the author and her family in 2013 after their previous home was flooded due to heavy rains. The author was also promised that the allocation would be formalized in a document at a later date, but such a document never materialized. The ostensible reason for the eviction from the apartment was the alleged misconduct of the author’s adult son, who did not live with the family and who had no criminal record.

3. To support a violation of article 24 (1), the author alleges that the eviction left her family in a situation of extreme precariousness and vulnerability. She claims that the State party’s failure to provide alternative housing resulted in the deterioration of the living conditions and psychological state of her two minor children.

4. The Committee relies on these allegations to support finding violations of articles 7 and 17 of the Covenant. It emphasizes that the forced eviction was carried out without due process of law and procedural guaranties and without due consideration of the consequences, including the risk of rendering the author and her children homeless and in a situation in which adequate alternative housing would not be immediately available to them. The Committee highlights the children’s particular vulnerability and disproportionate impact suffered by them in the face of the violent forced entry and eviction and the absence of alternative housing. However, the Committee decides – without any explanation, as noted in another separate opinion in this case – not to consider separately the claims of a violation of article 24 of the Covenant.

5. In our view, the facts set forth above provide ample support for finding that the State party failed to provide such measures of protection as are required by a child’s status as a minor, as required by article 24 (1) and general comment No. 17 (1989).<sup>1</sup> In determining such measures, the child’s best interests should be a primary consideration.<sup>2</sup> States parties must also take into account the vulnerability and immaturity of children,<sup>3</sup> as well as any other circumstances that adversely affect their physical and mental health or destabilize their social or family situation.<sup>4</sup>

<sup>1</sup> Para. 4.

<sup>2</sup> *D.T. and A.A. v. Canada* (CCPR/C/117/D/2081/2011), para. 7.10; *Hashemi and Hashemi v. Netherlands* (CCPR/C/125/D/2489/2014), para. 9.3; and *J.Y. and T.N. v. France* (CCPR/C/131/D/2944/2017), para. 9.7. See also the Convention on the Rights of the Child, art. 3 (1) (“In all actions concerning children ... the best interests of the child shall be a primary consideration.”); and Alfred de Zayas, “The CRC in litigation under the ICCPR and CEDAW”, in *Litigating the Rights of the Child*, Ton Liefaard and Jaap E. Doek eds. (Dordrecht, Kingdom of the Netherlands, Springer, 2014) (“The paramount consideration under article 24 of the ICCPR and under the CRC is the best interests of the child and the obligation of the state to ensure special protection of children.”).

<sup>3</sup> *Blessington and Elliot v. Australia* (CCPR/C/112/D/1968/2010), para. 7.11.

<sup>4</sup> *Abdoellaevna and Y v. Netherlands* (CCPR/C/125/D/2498/2014), para. 5.2.

6. In its prior jurisprudence, the Committee has identified both negative and positive dimensions of the “measures of protection” clause in article 24 (1). It has found violations of article 24 (1) as a result of a wide range of wrongful conduct against children by State party officials, including arbitrary arrest and disappearance,<sup>5</sup> mandatory immigration detention<sup>6</sup> and abusive conduct such as sexual violence, forced labour and torture.<sup>7</sup> Article 24 (1) also imposes on States parties a positive obligation to ensure that children’s physical and psychological well-being is protected, including through guarantee of subsistence under circumstances in which their parents have no other income or assistance.<sup>8</sup>

7. In the present case, the author has credibly alleged that her children have suffered demonstrable, documented and ongoing adverse effects<sup>9</sup> as a result of two circumstances: (a) the forceful and arbitrary eviction from a government-assigned flat (that the State party’s authorities had previously allocated to the author and her family as a result of their previous home being flooded due to heavy rains); and (b) the resulting inability of the family to secure adequate alternative housing.

8. We therefore conclude that the Committee should have found that the State party violated article 24 (1) of the Covenant in both its negative and positive aspects. The State party contravened its negative obligation by, in the context of the police and military operations for the liberation of the people implemented by the Government of the Bolivarian Republic of Venezuela, violently raiding the home of the author and her minor children and ordering them to vacate their home in only 20 minutes, in a threatening manner and as a punitive measure for the alleged misconduct of the author’s eldest son.

9. The State party also breached its positive obligation by failing to provide the family with any alternative housing or providing for their needs, thereby creating a risk of rendering the author and her children homeless. The authorities thus failed to consider the very reasons that they initially allocated, to the author and her minor children, the apartment from which they were later wrongfully evicted.

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<sup>5</sup> *Kerouane et al. v. Algeria* (CCPR/C/112/D/2132/2012), para. 7.12.

<sup>6</sup> *Bakhtiyari et al. v. Australia* (CCPR/C/79/D/1069/2002), para. 9.7.

<sup>7</sup> *Pharaka v. Nepal* (CCPR/C/126/D/2773/2016), para. 8.

<sup>8</sup> *Hashemi and Hashemi v. Netherlands*, para. 9.5. See also *Abdoellaevna and Y. v. Netherlands*, para. 7.4 (“the absence of social protection for children may in certain circumstances adversely affect their physical and psychological well-being”).

<sup>9</sup> *Bakhtiyari et al. v. Australia*, para. 9.7.