



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. 2819/2016*, **

<i>Communication submitted by:</i>	Aïcha Habouchi (represented by counsel, Nassera Dutour, of the Collectif des familles de disparu(e)s en Algérie)
<i>Alleged victims:</i>	The author and Abdelhakim Houari (the author's son)
<i>State party:</i>	Algeria
<i>Date of communication:</i>	7 April 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 6 January 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	27 March 2020
<i>Subject matter:</i>	Enforced disappearance
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to an effective remedy; cruel, inhuman or degrading treatment or punishment; liberty and security of person; human dignity; access to justice; recognition as a person before the law
<i>Articles of the Covenant:</i>	2 (2) and (3), 6, 7, 9, 10, 14 and 16
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2)

1.1 The author of the communication is Aïcha Habouchi, a national of Algeria. She claims that her son, Abdelhakim Houari, born on 19 May 1974 and also an Algerian national, was the victim of an enforced disappearance attributable to the State party, in violation of articles 2 (3), 6, 7, 9, 10 and 16 of the Covenant. The author also claims to have suffered a violation of her rights under article 2 (2) and (3), article 7 read in conjunction with article 2 (3), and article 14 of the Covenant. The Covenant and the Optional Protocol entered into force for the

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

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



State party on 12 December 1989. The author is represented by counsel, Nassera Dutour, of the Collectif des familles de disparu(e)s en Algérie.

1.2 On 18 September 2018, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to consider the admissibility of the communication separately from the merits.

The facts as submitted by the author

2.1 At about 11.30 a.m. on 13 November 1995, Abdelhakim Houari was walking with a friend near his neighbourhood (Hai El Badr, in Oran) when a blue van stopped alongside them, with two plain-clothes police officers inside. One of the officers jumped on Abdelhakim Houari and forced him into the van. Everything happened so quickly that his friend was unable to intervene. The customers in the nearby bakery also watched helplessly as he was arrested, and they immediately informed his mother of what had happened. Since that day, he has never been seen again.

2.2 Before this incident, Hai El Badr was a very peaceful neighbourhood. No acts of terrorism, nor even any police searches or arrests, had been carried out there. This arrest came as a surprise to everyone because Abdelhakim Houari was a very quiet boy without any political affiliation, who attended the local mosque and was involved in the work of a charity.

2.3 On 13 November 1995, as soon as she learned of her son's disappearance, the author wrote to the Prosecutor General at Oran Court of Justice and hurried to the Cité Petit gendarmerie station, then to the Hai El Badr gendarmerie station and the Dar el Beïda military barracks in Oran. All the gendarmes and soldiers to whom she spoke denied being involved in her son's detention or detaining him on their premises. Twenty days later, on 2 December 1995, three young men who were involved in the same charity as Abdelhakim Houari were arrested by the security forces and imprisoned at the Dar el Beïda military barracks. One of them was released after six months and the other two were released on 28 May 1997, after being tried on charges of unlawful activities based solely on the fact that the charity was not legally recognized. All of them told the author that they had seen Abdelhakim Houari many times at the Dar el Beïda military barracks. They said that he was psychologically very low and they thought he had remained at the barracks for at least seven months.

2.4 The author did all that she could to find her son by visiting the Dar el Beïda military barracks regularly until, one day, some soldiers ordered her to stay away, threatening reprisals against her and her family. As a result of the terror that reigned in the country during the 1990s, she waited for almost two years before filing a complaint with the judicial authorities.¹ Indeed, according to persistent rumours, if a family drew too much attention to the disappearance of a relative, the disappeared person would be executed and the authorities would blame the murder on terrorists.

2.5 On 20 September 1997, the author wrote to the prosecutor attached to the Oran court of first instance to request that he open an investigation into her son's disappearance and to submit the information communicated by the young men who had been arrested and detained at the Dar el Beïda military barracks with her son. Her letter went unanswered. On 19 August 1998, the author and a group of mothers of disappeared persons requested a lawyer to file a complaint on their behalf with the court. No action was taken in response to the complaint. On 31 May 2000, she wrote again to the prosecutor, requesting an investigation into her son's disappearance and complaining about the prosecutor's failure to respond. To this day, she has received no reply.

2.6 On 13 July 2008, the author received from the Oran criminal investigation police a death certificate concerning Abdelhakim Houari, which stated that an investigation had shown that he had joined the armed groups on 24 November 1995 and had later died in the maquis. The author refused to believe the information given in the certificate, especially as a friend of her son's and customers in the bakery had witnessed her son being forced into the blue van. Furthermore, the three young men detained later in the Dar el Beïda military barracks had confirmed having seen him there over the course of several months. The author

¹ Complaints attached to the case file.

therefore went to the Oran court of first instance and asked to be heard by a member of the prosecutor's office. No one took the trouble to meet with her, and a judge who was there strongly advised her against pursuing the matter. On 17 July 2010, she sent another letter to the prosecutor attached to the court. On 14 September 2010, she wrote to the Prosecutor General at Oran Court of Justice to contest the version of events given in her son's death certificate. She demanded that it be mentioned in the certificate that he had gone missing after being arrested by two police officers on 13 November 1995.

2.7 On 4 April 2011, the author was summoned by the prosecutor attached to the Oran court of first instance. During the hearing, the prosecutor strongly advised her to sign the death certificate so that the process established pursuant to Presidential Decree No. 06-94 of 28 February 2006, whereby State assistance was provided to impoverished families adversely affected by the involvement of a close relative in terrorism, could be set in motion. She refused and reiterated her request that the version of events given in her son's death certificate be amended. On 30 November 2011, the author confirmed to the prosecutor in writing that she wished to contest the official version of the events surrounding her son's death.

2.8 On 30 November 2014, the author was summoned again by the prosecutor attached to the Oran court of first instance. During the hearing, he informed her that the version of events given in the certificate, namely that her son had died in the maquis, was the result of a clerical error by the judicial administration. The author therefore requested that the certificate be amended and an investigation be opened. Her requests went unheeded.

2.9 The author raised her concerns not only with the judicial authorities but also with various non-judicial bodies. She wrote to the Minister of Justice,² the representative of the Office of the Ombudsman,³ the president of the National Human Rights Observatory,⁴ the Minister of Employment and Social Cohesion,⁵ the Ligue algérienne pour la défense des droits de l'homme,⁶ the Secretary-General of the Workers' Party,⁷ the commander of the second military region, whose headquarters are in Oran,⁸ the Minister of Defence⁹ and the association SOS Disparus.¹⁰ Nothing came of these letters. On 21 May 2007, the author submitted her son's case to the Working Group on Enforced or Involuntary Disappearances.

2.10 Finally, in April 2015, the author was summoned to the Cité Djamel gendarmerie station in Oran. She thought that she was being summoned to a hearing with gendarmes who were going to investigate the case, whereas, in fact, the sole aim of the meeting was to intimidate her and thus discourage her from pursuing the matter further. The gendarmes explicitly asked her to stop making enquiries and to accept the State assistance intended for impoverished families. The author stood by her version of the events surrounding her son's disappearance and requested that his remains be returned to her, if he had died in prison.

2.11 Despite all the author's efforts, no investigation has been opened. The author points out that it is now legally impossible for her to bring the case before the judicial authorities, following the promulgation of Ordinance No. 06-01 of 27 February 2006 on the implementation of the Charter for Peace and National Reconciliation. As a result, the existing domestic remedies, which were in any case fruitless and ineffective, are no longer available. The Charter for Peace and National Reconciliation provides that "reprehensible acts on the part of agents of the State, which have been punished by law whenever they have been proved, cannot be used as a pretext to discredit the security forces as a whole, who were doing their duty for their country with the support of the general public".

2.12 According to the author, since Ordinance No. 06-01 prohibits the opening of legal proceedings on pain of criminal prosecution, victims are relieved of any obligation to exhaust

² Letters dated 14 June 1997, 4 August 1997, 15 September 1997 and 29 April 2008.

³ Letter dated 2 July 1997.

⁴ Letter dated 4 August 1997.

⁵ Letter dated 10 June 1998.

⁶ Letter dated 8 August 1998.

⁷ Letter dated 11 August 1998.

⁸ Letters dated 18 November 1998 and 16 April 2000.

⁹ Letter dated 14 November 2000.

¹⁰ Letters dated 9 October 2002 and 16 January 2003.

domestic remedies. Article 45 of the Ordinance prohibits any complaint of disappearance or other offences, stipulating that “no individual or class action may be taken against members of any branch of the defence and security forces of the Republic for actions carried out to protect persons and property, safeguard the nation and preserve the institutions of the People’s Democratic Republic of Algeria”. Pursuant to this provision, any allegation or complaint must be declared inadmissible by the competent judicial authority. Furthermore, article 46 of the Ordinance establishes that:

Anyone who, through his or her spoken or written statements or any other act, uses or makes use of the wounds caused by the national tragedy to undermine the institutions of the People’s Democratic Republic of Algeria, weaken the State, impugn the honour of its agents who served it with dignity or tarnish the image of Algeria abroad shall be liable to a term of imprisonment of 3 to 5 years and a fine of 250,000 to 500,000 Algerian dinars. Criminal proceedings shall be automatically initiated by the public prosecutor’s office.

The penalty established in the present article shall be doubled for repeat offences.

The complaint

3.1 The author alleges that her son was the victim of a disappearance caused by the actions of the police and therefore attributable to the State party, pursuant to the definition of enforced disappearance set forth in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance. The author argues that, although no provision of the Covenant expressly mentions enforced disappearance, the practice involves violations of the right to life, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, and the right to liberty and security of person. In the present case, the author is claiming that the State party has violated articles 2 (2) and (3), 6, 7, 9, 10, 14 and 16 of the Covenant.

3.2 The author considers that Ordinance No. 06-01 constitutes a violation of the State party’s general obligation under article 2 (2) of the Covenant, in that the said article also entails a negative obligation for States parties to refrain from adopting measures that are contrary to the Covenant. In adopting the Ordinance, in particular article 45 thereof, the State party adopted a legislative measure that prevents the enjoyment of rights recognized under the Covenant, particularly the right to have access to an effective remedy against violations of human rights.¹¹ Since the Ordinance was promulgated, the author has been unable to take legal action. She considers that any failure, by act or omission, to meet the obligation established by article 2 (2) of the Covenant may engage the international responsibility of the State party.¹² She affirms that, despite all the steps she has taken since the entry into force of the Charter for Peace and National Reconciliation and its implementing legislation, her complaints have not been addressed. She therefore considers herself to be a victim of this legislative provision that violates article 2 (2) of the Covenant.

3.3 The author adds that the provisions of Ordinance No. 06-01 are contrary to article 2 (3) of the Covenant because they prevent the criminal prosecution of suspected perpetrators of enforced disappearance in cases where those individuals are agents of the State. The effect of this Ordinance is to grant amnesty for crimes committed in the past decade, including the most serious crimes such as enforced disappearance. The Ordinance also prohibits, on pain of imprisonment, the use of the justice system to shed light on the fate of victims.¹³ It is clear that the Algerian authorities, including the judicial authorities, are refusing to establish the responsibility of the security forces, including the officers who perpetrated the enforced disappearance of Abdelhakim Houari. This refusal hinders the effectiveness of the remedies sought by his family.

¹¹ See, inter alia, the concurring individual opinion of Fabián Salvioli in the case of *Djebbar and Chihoub v. Algeria* (CCPR/C/103/D/1811/2008).

¹² Committee’s general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 4.

¹³ CCPR/C/DZA/CO/3, paras. 7–8.

3.4 The author recalls the developments in the Committee's jurisprudence regarding enforced disappearance and considers that the mere risk or danger of loss of life in the context of enforced disappearance is enough to justify finding a direct violation of article 6 of the Covenant. She recalls the facts surrounding the disappearance of her son and considers that the chances of finding him are shrinking by the day, and either that her son has lost his life or that he is being held in incommunicado detention, which would constitute a very high risk to his life, since he would be at the mercy of his jailers, beyond oversight of any kind. The author therefore considers that the State party has failed to meet its obligation to protect the right to life of Abdelhakim Houari and to investigate what happened to him, in violation of article 6 (1) of the Covenant.

3.5 Recalling the circumstances of her son's disappearance, namely the total lack of information on his possible detention or imprisonment or on his state of health, and the lack of communication with his family or the outside world, the author contends that Abdelhakim Houari was subjected to cruel, inhuman or degrading treatment. Referring to the Committee's jurisprudence, the author notes that the anguish, uncertainty and distress caused to the family of Abdelhakim Houari as a result of his disappearance constitute cruel, inhuman or degrading treatment. Consequently, the author claims that the State party has committed a violation of article 7 of the Covenant in respect of Abdelhakim Houari and a violation of article 7, read in conjunction with article 2 (3), in respect of his family.

3.6 Recalling that article 9 of the Covenant establishes the right of everyone to liberty and security of person and also prohibits arbitrary arrest and detention, the author considers that the arrest and detention of Abdelhakim Houari constitute an arbitrary deprivation of his liberty and security. She therefore considers that her son was deprived of the safeguards described in article 9 of the Covenant, which amounts to a violation of his rights under the article in question.

3.7 Recalling the provisions of article 10 of the Covenant, the author also argues that, in the absence of any investigation by the Algerian authorities, Abdelhakim Houari was deprived of his liberty and was not treated with humanity and dignity, which amounts to a violation of his rights under the article concerned.

3.8 Recalling the provisions of article 14 of the Covenant and paragraph 9 of the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the author notes that all attempts to bring the case before the judicial authorities have proved fruitless. The police provided her with a death certificate indicating that her son had died in the maquis, having joined the ranks of the terrorists, even though she had gathered all the relevant evidence proving that he had been arrested by police officers on 13 November 1995. Furthermore, the prosecutor attached to the Oran court of first instance summoned the author and urged her to sign the death certificate, despite having acknowledged that it was the result of a clerical error by the judicial administration, and did not order any new investigation or proceedings in connection with this glaring error. The State party has therefore violated article 14 of the Covenant in respect of the author.

3.9 The author then recalls the provisions of article 16 of the Covenant and the Committee's established jurisprudence, according to which the intentional removal of a person from the protection of the law for a prolonged period of time may constitute a refusal of recognition as a person before the law if the victim was in the hands of the State authorities when last seen, and if the efforts of relatives to obtain access to effective remedies, including judicial remedies, have been systematically impeded. She refers in this regard to the Committee's concluding observations on the second periodic report of Algeria under article 40 of the Covenant,¹⁴ in which the Committee established that disappeared individuals who were still alive and kept incommunicado suffered a violation of their right to recognition as persons before the law, enshrined in article 16 of the Covenant. She therefore asserts that, by keeping Abdelhakim Houari in detention without acknowledging it, the Algerian authorities have denied her son the protection of the law and have deprived him of his right to recognition as a person before the law, in violation of article 16 of the Covenant.

¹⁴ CCPR/C/79/Add.95, para. 10.

3.10 The author requests the Committee to find that the State party has violated articles 2 (3), 6, 7, 9, 10 and 16 of the Covenant in respect of Abdelhakim Houari, and article 2 (2) and (3), article 7 read in conjunction with article 2 (3), and article 14 of the Covenant in respect of the author and her family. She also requests that it urge the State party to respect its international commitments, to give effect to the rights recognized in the Covenant, as well as the rights recognized in all the international human rights conventions ratified by Algeria, and to take appropriate measures to ensure that such violations do not reoccur in the future. The author further requests that the Committee call upon the State party to order independent and impartial investigations with the aim of: (a) finding Abdelhakim Houari and fulfilling its commitment under article 2 (3) of the Covenant; (b) bringing the perpetrators of this enforced disappearance before the competent civilian authorities for prosecution in line with article 2 (3) of the Covenant; and (c) providing Abdelhakim Houari, if he is still alive, and his family with adequate, effective and prompt reparation for the harm suffered, in accordance with articles 2 (3) and 9 of the Covenant, including compensation that is appropriate and proportional to the gravity of the violation and full rehabilitation. Lastly, she requests that the Committee urge the Algerian authorities to repeal articles 27–39, 45 and 46 of Ordinance No. 06-01, as well as article 2 of Presidential Decree No. 06-94.

State party's observations

4. On 3 April 2017, the State party invited the Committee to refer to the background memorandum of the Algerian Government on handling the issue of disappearances in the light of the implementation of the Charter for Peace and National Reconciliation, without attaching a copy of the memorandum to its submission, and requested that the admissibility of the communication be considered separately from the merits and that the communication be declared inadmissible. After the Committee refused to grant this request for separate consideration, the State party, on 4 October 2018, once again invited the Committee to refer to the said background memorandum and, consequently, not to consider the merits of the case.

Author's comments on the State party's observations

5.1 On 16 March 2018, the author submitted her comments on the State party's observations on admissibility. She emphasizes that these observations are inappropriate and obsolete, given that they are addressed to another body concerned with the promotion and protection of human rights – the Working Group on Enforced or Involuntary Disappearances – and are dated July 2009. Moreover, they do not deal at all with the admissibility of the communication, the particulars of the case or the remedies sought by the victim's family and therefore demonstrate the Algerian authorities' disregard and disdain for this procedure.

5.2 Recalling that none of the remedies sought have led to a thorough investigation or criminal proceedings and that the Algerian authorities have failed to provide tangible evidence of any real efforts to locate Abdelhakim Houari and identify those responsible for his disappearance, the author concludes that domestic remedies have been exhausted and that the Committee should find the communication admissible.

5.3 Referring to the Committee's jurisprudence to the effect that the Charter for Peace and National Reconciliation cannot be used against persons who submit individual communications, the author recalls that the provisions of the Charter are certainly not a satisfactory response to the problem of disappearances, which calls for an approach based on respect for the right to the truth, justice and full redress.

Lack of cooperation by the State party

6. The Committee recalls that, on 3 April 2017 and 4 October 2018, the State party contested the admissibility of the communication by referring to the 2009 background memorandum of the Algerian Government on handling the issue of disappearances in the light of the implementation of the Charter for Peace and National Reconciliation. On 6 January 2017, and again on 18 September and 12 December 2018, the State party was invited to submit its observations on the merits of the communication. The Committee notes that it has not received any response and regrets the refusal of the State party to provide any information in this regard. Under article 4 (2) of the Optional Protocol, the State party has

the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with whatever information is available to it.¹⁵

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the disappearance was reported to the Working Group on Enforced or Involuntary Disappearances. However, it recalls that extra-conventional procedures or mechanisms established by the Human Rights Council to examine and report publicly on human rights situations in specific countries or territories, or cases of widespread human rights violations worldwide, do not generally constitute a procedure of international investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol.¹⁶ Accordingly, the Committee considers that the examination of Abdelhakim Houari's case by the Working Group on Enforced or Involuntary Disappearances does not render the communication inadmissible under this provision.

7.3 The Committee notes the author's claim that she has exhausted all the available domestic remedies. It notes that the State party contested the admissibility of the communication simply by referring to the 2009 background memorandum of the Algerian Government on handling the issue of disappearances in the light of the implementation of the Charter for Peace and National Reconciliation. In this regard, the Committee recalls that, in 2018, it expressed its concern that, despite repeated requests, the State party continued to refer systematically to a general document (the "aide-memoire"), without responding specifically to the claims made by authors of communications. The Committee therefore called on the State party, as a matter of urgency, to cooperate with it in good faith under the individual communications procedure by ceasing to refer to the "aide-memoire" and by responding individually and with specifics to the claims made by authors of communications.¹⁷

7.4 The Committee recalls that the State party has a duty not only to carry out thorough investigations of alleged violations of human rights brought to the attention of its authorities, particularly violations of the right to life, but also to prosecute, try and punish anyone held to be responsible for such violations.¹⁸ Although Abdelhakim Houari's family has brought his enforced disappearance to the attention of the competent authorities on many occasions, the State party has not undertaken any thorough and effective investigation into this serious allegation and has even claimed, contrary to all evidence, that he died in the maquis. The State party has not offered any specific explanation in its observations regarding the case of Abdelhakim Houari that would lead to the conclusion that an effective remedy is now available. Moreover, Ordinance No. 06-01 continues to be applied despite the Committee's recommendation that it should be brought into line with the Covenant.¹⁹ In its concluding observations on the fourth periodic report of the State party, the Committee deplored "in particular the fact that there is no effective remedy available for disappeared persons or their families and that no action has been taken to uncover the truth about disappeared persons, to find them and, if they are deceased, to return their remains to their families".²⁰ In the

¹⁵ *Mezine v. Algeria* (CCPR/C/106/D/1779/2008), para. 8.3; and *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.3.

¹⁶ See, inter alia, *Tharu et al. v. Nepal* (CCPR/C/114/D/2038/2011), para. 9.2; *Ammari v. Algeria* (CCPR/C/112/D/2098/2011), para. 7.2; and *Zaier v. Algeria* (CCPR/C/112/D/2026/2011), para. 6.2. CCPR/C/DZA/CO/4, paras. 7–8.

¹⁷ *Boudjemai v. Algeria* (CCPR/C/107/D/1791/2008), para. 7.4.

¹⁸ CCPR/C/DZA/CO/3, paras. 7–8 and 13, and CCPR/C/DZA/CO/4, paras. 6, 8, 12, 14 and 34.

²⁰ CCPR/C/DZA/CO/4, para. 29.

circumstances, the Committee finds that it is not precluded from considering the communication under article 5 (2) (b) of the Optional Protocol.

7.5 The Committee notes that the author has alleged separate violations of her own rights under article 2 (2) and (3) of the Covenant. Recalling its jurisprudence to the effect that the provisions of article 2 lay down general obligations for States parties and cannot, by themselves, give rise to a separate claim under the Optional Protocol because they may be invoked only in conjunction with other substantive articles of the Covenant,²¹ the Committee considers the author's separate claims under article 2 (2) and (3) of the Covenant to be inadmissible under article 3 of the Optional Protocol.

7.6 However, the Committee is of the view that the author has sufficiently substantiated her other claims for purposes of admissibility and proceeds to consider the merits of the claims made under articles 2 (3), 6 (1), 7, 9, 10, 14 and 16 of the Covenant.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all information made available to it, as required under article 5 (1) of the Optional Protocol.

8.2 The Committee notes that the State party has merely referred to the collective and general observations that it had previously transmitted to the Working Group on Enforced or Involuntary Disappearances and to the Committee in connection with previous communications, in order to confirm its position that such cases have already been settled through the implementation of the Charter for Peace and National Reconciliation. The Committee refers to its jurisprudence and to its concluding observations on the fourth periodic report of Algeria, and recalls that the State party may not use the provisions of the Charter against persons who invoke provisions of the Covenant or who have submitted, or may submit, communications to the Committee. The Covenant requires the State party to concern itself with the fate of every individual and to treat every individual with respect for the inherent dignity of the human person. Given that the amendments recommended by the Committee have not been introduced, Ordinance No. 06-01 contributes, in the present case, to impunity and cannot be considered compatible with the provisions of the Covenant.²²

8.3 The Committee notes that the State party has not responded to the author's claims concerning the merits of the case and recalls that, as has been established in its jurisprudence, the burden of proof should not rest solely on the author of a communication, especially given the fact that the author and the State party do not always have the same degree of access to evidence and that, often, the State party alone has the necessary information.²³ Under article 4 (2) of the Optional Protocol, the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with whatever information is available to it.²⁴ In the absence of any explanations from the State party in this respect, due weight must be given to the author's allegations, provided that they have been sufficiently substantiated.

8.4 The Committee recalls that, while the Covenant does not explicitly use the term "enforced disappearance" in any of its articles, enforced disappearance constitutes a unique and integrated series of acts that represents continuing violation of various rights recognized in that treaty, such as the right to life, the right not to be subjected to torture and other cruel,

²¹ See, for example, *H.E.A.K. v. Denmark* (CCPR/C/114/D/2343/2014), para. 7.4; *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.4; *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4; and *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5.

²² *Zaier v. Algeria*, para. 7.2, and *Ammari v. Algeria*, para. 8.2.

²³ See, inter alia, *Zaier v. Algeria*, para. 7.3; *Ammari v. Algeria*, para. 8.3; *Mezine v. Algeria*, para. 8.3; *El Abani v. Libyan Arab Jamahiriya* (CCPR/C/99/D/1640/2007), para. 7.4; and *Berzig v. Algeria* (CCPR/C/103/D/1781/2008), para. 8.3.

²⁴ *Mezine v. Algeria*, para. 8.3; and *Medjnoune v. Algeria*, para. 8.3.

inhuman or degrading treatment or punishment, and the right to liberty and security of person.²⁵

8.5 The Committee notes that Abdelhakim Houari was last seen on an unspecified date between June 1996 and May 1997, by three of his friends, while he was being detained at the Dar el Beïda military barracks. It notes that the State party has not produced any evidence indicating what happened to Abdelhakim Houari and has never even confirmed his detention. The Committee recalls that, in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.²⁶ In the present case, the Committee notes that the State party has produced no evidence indicating that it fulfilled its obligation to protect the life of Abdelhakim Houari. The Committee therefore finds that the State party has failed in its duty to protect Abdelhakim Houari's life, in violation of his rights under article 6 (1) of the Covenant.

8.6 The Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, in which it recommends that States parties take steps to prohibit incommunicado detention. It notes that, in the present case, after hearing news about her son from three of his friends who had seen him at the Dar el Beïda military barracks, the author received no further information whatsoever about what had become of him or where he was being held, even though she tried several times to visit the barracks and made repeated requests to the State authorities. The Committee therefore considers that it is possible that Abdelhakim Houari, who disappeared on 13 November 1995, is still being held incommunicado by the Algerian authorities. In the absence of any explanation from the State party, the Committee considers that this disappearance constitutes a violation of article 7 of the Covenant in respect of Abdelhakim Houari.²⁷

8.7 In view of the above, the Committee will not consider separately the claims relating to the violation of article 10 of the Covenant.²⁸

8.8 The Committee also notes the anguish and distress caused to the author and her family by the disappearance of Abdelhakim Houari, who has been missing for more than 24 years. It considers that the facts before it disclose a violation of article 7, read alone and in conjunction with article 2 (3) of the Covenant, in respect of the author.²⁹

8.9 With regard to the alleged violation of article 9 of the Covenant, the Committee takes note of the author's allegations that Abdelhakim Houari was arbitrarily arrested, without a warrant, was not formally charged and was not brought before a judicial authority, which would have enabled him to challenge the lawfulness of his detention. In the absence of any information from the State party in this regard, the Committee considers that due weight must be given to the author's allegations,³⁰ and it therefore finds a violation of article 9 of the Covenant in respect of Abdelhakim Houari.³¹

²⁵ *Katwal v. Nepal* (CCPR/C/113/D/2000/2010), para. 11.3; *Serna et al. v. Colombia* (CCPR/C/114/D/2134/2012), para. 9.4; and *El Boathi v. Algeria* (CCPR/C/119/D/2259/2013), para. 7.4. See also the Committee's general comment No. 36 (2018) on the right to life, para. 58.

²⁶ *Louddi v. Algeria* (CCPR/C/112/D/2117/2011), para. 7.4; *Mezine v. Algeria*, para. 8.4; and *Boudjemai v. Algeria*, para. 8.4. See also the Committee's general comment No. 36, para. 58.

²⁷ *Ammari v. Algeria*, para. 8.5; *Mezine v. Algeria*, para. 8.5; *Khirani v. Algeria* (CCPR/C/104/D/1905/2009 and Corr.1), para. 7.5; *Berzig v. Algeria*, para. 8.5; and *El Alwani v. Libyan Arab Jamahiriya* (CCPR/C/90/D/1295/2004), para. 6.5.

²⁸ *Ammari v. Algeria*, para. 8.6.

²⁹ *Mezine v. Algeria*, para. 8.6; *Khirani v. Algeria*, para. 7.6; *Berzig v. Algeria*, para. 8.6; *El Abani v. Libyan Arab Jamahiriya*, para. 7.5; and *El Hassy v. Libyan Arab Jamahiriya* (CCPR/C/91/D/1422/2005), para. 6.11.

³⁰ *Chani v. Algeria* (CCPR/C/116/D/2297/2013), para. 7.5.

³¹ See, inter alia, *Mezine v. Algeria*, para. 8.7; *Khirani v. Algeria*, para. 7.7; and *Berzig v. Algeria*, para. 8.7.

8.10 The author also invokes article 14 of the Covenant, alleging a lack of access to the judicial authorities of the State party. The Committee recalls its general comment No. 32, in which it states that a situation in which an individual's attempts to access the competent courts or tribunals are systematically frustrated *de jure* or *de facto* runs counter to the guarantee set forth in the first sentence of article 14 (1) of the Covenant. It notes that, in this instance, all attempts by the author to bring the case before the judicial authorities have proved fruitless. It refers to its concluding observations on the fourth periodic report of Algeria, in which it expressed its concern with regard to articles 45 and 46 of Ordinance No. 06-01, which infringe the right of any person to have access to an effective remedy against violations of human rights.³² This right also encompasses the right to have access to a court, which is enshrined in article 14 (1) of the Covenant. The Committee therefore finds that the State party has failed in its duty to ensure that the author has access to a court, in violation of article 14 (1) of the Covenant.

8.11 The Committee is of the view that the intentional removal of a person from the protection of the law constitutes a denial of the right to recognition as a person before the law, particularly if the efforts of the victim's relatives to exercise their right to an effective remedy have been consistently impeded.³³ In the present case, the Committee notes that the State party has not provided any explanation as to the fate or whereabouts of Abdelhakim Houari, despite the enquiries made by his relatives and the fact that, when he was last seen, Abdelhakim Houari was in the hands of the State authorities. The Committee finds that Abdelhakim Houari's enforced disappearance more than 24 years ago removed him from the protection of the law and deprived him of his right to recognition as a person before the law, in violation of article 16 of the Covenant.

8.12 The author also invokes – in conjunction with article 7 – article 2 (3) of the Covenant, which requires States parties to ensure that individuals have accessible, effective and enforceable remedies for asserting the rights enshrined in the Covenant. The Committee recalls the importance that it attaches to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of violations of the rights enshrined in the Covenant.³⁴ It recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it states that failure by a State party to investigate alleged violations could in and of itself give rise to a separate breach of the Covenant.

8.13 In the present case, the author reported her son's disappearance to the competent authorities several times, yet the State party failed to conduct a thorough and effective investigation into his disappearance and the author was not provided with any credible information regarding her son's fate. Furthermore, the legal impossibility of applying to a judicial body since the promulgation of Ordinance No. 06-01 continues to deprive Abdelhakim Houari and the author of any access to an effective remedy, given that the Ordinance prohibits the use of the justice system to shed light on the most serious crimes, such as enforced disappearance.³⁵ The Committee finds that the facts before it disclose a violation of article 2 (3), read in conjunction with articles 6, 7, 9 and 16 of the Covenant, with regard to Abdelhakim Houari, and of article 2 (3), read in conjunction with article 7 of the Covenant, with regard to the author.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses violations by the State party of articles 6, 7, 9 and 16 of the Covenant, as well as of article 2 (3) read in conjunction with articles 6, 7, 9 and 16, with regard to Abdelhakim Houari. It also finds a violation by the State party of article 7, read alone and in conjunction with article 2 (3), and of article 14 of the Covenant, with regard to the author.

10. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. It is required to make full

³² CCPR/C/DZA/CO/4, paras. 11–14.

³³ *Basnet v. Nepal* (CCPR/C/117/D/2164/2012), para. 10.9; *Tharu et al. v. Nepal*, para. 10.9; *Serna et al. v. Colombia*, para. 9.5.

³⁴ *Allioua and Kerouane v. Algeria* (CCPR/C/112/D/2132/2012), para. 7.11.

³⁵ CCPR/C/DZA/CO/3, para. 7.

reparation to individuals whose Covenant rights have been violated. In the present case, the State party is obliged to: (a) conduct a prompt investigation that is effective, thorough, independent, impartial and transparent into the disappearance of Abdelhakim Houari and provide the author with detailed information about the results of its investigation; (b) release Abdelhakim Houari immediately if he is still being held incommunicado; (c) in the event that Abdelhakim Houari is deceased, hand over his remains to his family, under decent conditions, in accordance with the cultural norms and customs of the victims; (d) prosecute, try and punish those responsible for the violations committed; (e) provide full reparation, including adequate compensation, to the author, and to Abdelhakim Houari if he is alive; and (f) provide appropriate satisfaction to the author. Notwithstanding the terms of Ordinance No. 06-01, the State party should ensure that it does not impede enjoyment of the right to an effective remedy for crimes such as torture, extrajudicial killings and enforced disappearances. It is also under an obligation to take steps to prevent similar violations in the future. To that end, the Committee is of the view that the State party should review its legislation in accordance with its obligation under article 2 (2) of the Covenant and, in particular, repeal the provisions of the aforementioned Ordinance that are incompatible with the Covenant, to ensure that the rights enshrined in the Covenant can be enjoyed fully in the State party.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also invited to publish the Views and to have them widely disseminated in the official languages of the State party.
