



# 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. 3082/2017\*, \*\*

<i>Communication submitted by:</i>	Ahmed Souaiene and Aïcha Souaiene (represented by counsel, Nassera Dutour of the Collectif des familles de disparu(e)s en Algérie)
<i>Alleged victim:</i>	The authors and Rabah Souaiene (the authors' son)
<i>State party:</i>	Algeria
<i>Date of communication:</i>	8 September 2017 (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 20 December 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; and 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 authors of the communication are Ahmed Souaiene and his wife Aïcha Ben Djézia Ep Souaiene, both of Algerian nationality. They claim that their son, Rabah Souaiene, born on 1 January 1966, also an Algerian national, was the victim of enforced disappearance attributable to the State party, in violation of articles 6, 7, 9, 10 and 16 of the Covenant. The authors further claim to be victims of a violation of their rights under articles 2 (2) and (3) and 7 and 14 of the Covenant. The Covenant and the Optional Protocol to the Covenant entered into force for the State party on 12 December 1989. The authors are represented by counsel, Nassera Dutour, of the Collectif des familles de disparu(e)s en Algérie.

\* 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.



1.2 On 17 September 2018, the Committee, acting through the Special Rapporteur on new communications and interim measures, decided not to consider the admissibility of the communication separately from the merits.

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

2.1 Rabah Souaiene held the position of Chief Warrant Officer at the Department of Intelligence and Security, a department attached to the Ministry of Defence and known as the military security service. A few days before his disappearance, he had submitted his resignation to the Department. Some 100 of his colleagues had done the same, and only 5 had received a favourable response, subject to the requirement to serve a six-month period of notice. Rabah Souaiene was one of these five people, and the service's authorities asked him to consider what to do about his resignation during the six months' notice period. It was during this period, on 18 December 1994, that Rabah Souaiene went missing. He left his home to go to an appointment, driving his white car, with licence plate number 00899 183 16. Neither he nor his car have been seen since.

2.2 The day before he went missing, Rabah Souaiene received a phone call. His father overheard him arranging to meet people, indicating his licence plate number and the location of the meeting, at Diar Es-Saada. Before leaving, he left his gold chain with his mother, as if he already knew that he would not return.

2.3 The next day, his cousin Bendjazia Allal, who was at the time a police officer at the Directorate-General of National Security, went to the Salembier police station in Algiers to report his disappearance, specifying the licence plate number of his car. The police officers immediately posted the car's licence plate number and description on the lost property board at the police station. However, when the victim's cousin returned to the police station the next day, the posting had already been removed. When he asked the police why, he was given no answer. Rabah Souaiene's father visited the police stations, gendarmeries and barracks all around Algiers. He enquired at the hospitals and morgues, to no avail.

2.4 On 23 December 1994, Rabah Souaiene's father was summoned by the gendarmes in Diar el Mahçoul. The interview with the gendarmes focused exclusively on his daughters, not on his missing son. Ahmed Souaiene asked about the reason for the questioning but received no answer. He was then summoned to the Reghaïa signal barracks, and then to the Blida barracks, 18 months after his son's disappearance. There, the soldiers asked about his son. They specifically wanted to find out why he had not returned to work, as they needed him.

2.5 In 2002, Rabah Souaiene's family received information that he was being held at the barracks in Boumerdès. When the authors went there, they were received by a soldier who asked them the purpose of their visit. Aïcha Souaiene replied that she was looking for her missing son and that she had been informed that he was detained at the barracks. The soldier then asked her to show him a picture of his son. When she did so, he asked her if she was sure that it was her son who was there. There was another person in the barracks who looked like the person in the picture but who had a different name. She confirmed that it was indeed her son, and the soldier then asked her to come back later in the morning with the photograph, telling her that she would have good news.

2.6 The authors thus returned to the barracks as agreed, later that morning, but an official met them and told them never to return. They were escorted to the exit by the two soldiers who had received them earlier. The soldiers asked the authors not to turn around, as there were surveillance cameras in the barracks. Once they had walked away a sufficient distance from the barracks and thus from the cameras, they spoke to Rabah Souaiene's mother and told her that they felt her pain and that they would not want their mothers to have to face such an ordeal. They thus offered to help her by taking her phone number so they could tell her where her son was. Aïcha Souaiene therefore left them her contact information. She never heard from them again.

2.7 According to the authors, Rabah Souaiene's disappearance is related to the fact that he submitted his resignation to the military security service. Even though his resignation was accepted by his superiors, this was exceptional; resignations from the Department of Intelligence and Security are rare.

2.8 A few months after her son's disappearance, Ahmed Souaiene, a taxi driver, was stopped by two men who asked him to follow them while whispering in his ear that they were trustworthy people and that he had nothing to worry about. They nonetheless shot him in the head and then dragged him out of the car. Ahmed Souaiene was taken to hospital by passers-by who happened upon him, and he was saved. According to the authors, this event is related to Rabah Souaiene's disappearance.

2.9 On 3 February 1999, Ahmed Souaiene lodged a complaint with the public prosecutor at the Sidi M'Hamed court, requesting that an investigation be opened into the fate of his son. On 26 July 2006, he requested the opening of an investigation by the head of the Salembier National Gendarmerie brigade. He sent other requests for the opening of an investigation on 29 July 2006 to the public prosecutor at the Algiers court and on 30 July 2006 to the public prosecutor at the Sidi M'Hamed court. Lastly, on 23 March 2016, Ahmed Souaiene lodged a complaint with the public prosecutor at the Sidi M'Hamed court, requesting that an investigation be opened into the fate of Rabah Souaiene.

2.10 While calling for the assistance of the judicial authorities, the authors also sought support from various non-judicial bodies. On 22 January 1997, they filed a request with the Ombudsman, who replied that the request had been transferred to the relevant services. On an unspecified date in 1998, the authors filed a request with the President of the National Human Rights Observatory,<sup>1</sup> who informed them that the Algerian security services had already investigated this case<sup>2</sup> and that the persons responsible for Rabah Souaiene's disappearance were still unknown. On 8 August 2003 and then on 21 February 2006, the authors sent requests to the Head of Government asking for an investigation to be opened into the fate of Rabah Souaiene.

2.11 Rabah Souaiene's case was also submitted to the Working Group on Enforced or Involuntary Disappearances, on 13 March 2000. Seventeen years after it was taken up by the Working Group, the Algerian authorities had still not shed light on the case.

2.12 Despite the authors' best efforts, no investigation has been undertaken by the competent State authorities. The authors point out that it is now legally impossible for them to invoke judicial proceedings after the issuance of Ordinance No. 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation. Domestic remedies, which had already proved useless and ineffective, have thus become unavailable. Indeed, according to the Charter for Peace and National Reconciliation, "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 its citizens".

2.13 The authors argue that, since Ordinance No. 06-01 prohibits recourse to judicial proceedings, on pain of criminal prosecution, the victims are relieved of any obligation to exhaust domestic remedies. Article 45 of the Ordinance in fact prohibits any complaint of disappearance or other offences, by providing 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". By virtue of this provision, any allegation or complaint must be declared inadmissible by the competent legal 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."

<sup>1</sup> Replaced successively by the National Advisory Commission for the Promotion and Protection of Human Rights and later by the National Human Rights Council.

<sup>2</sup> Minutes No. 779 of 10 September 1998.

### The complaint

3.1 The authors allege that their son was the victim of a disappearance as defined under the definition of enforced disappearances in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance. The authors argue that, although no provision of the Covenant expressly mentions enforced disappearance, such practices involve 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 authors claim that the State party violated articles 2 (2) and (3) and 6, 7, 9, 10, 14 and 16 of the Covenant.

3.2 The authors consider that Ordinance No. 06-01 constitutes a violation of the general obligation assumed by the State party under article 2 (2) of the Covenant, in that this provision also implies 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,<sup>3</sup> particularly the right to have access to an effective remedy against violations of human rights. Since the promulgation of this Ordinance, the authors have been prevented from taking legal action. They consider that a breach, by act or omission, of the obligation imposed by article 2 (2) of the Covenant may engage the international responsibility of the State party.<sup>4</sup> They claim that despite all their efforts after the Charter for Peace and National Reconciliation and its implementing legislation came into force, their complaints have gone unanswered. They therefore claim to be victims of this legislative provision that violates article 2 (2) of the Covenant.

3.3 The authors add that the provisions of Ordinance No. 06-01 are contrary to article 2 (3) of the Covenant, since they have the effect of preventing any criminal proceedings against alleged perpetrators of enforced disappearance when such persons 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. Moreover, the law prohibits, subject to a penalty of imprisonment, the use of the justice system to establish the fate of victims.<sup>5</sup> The steps taken by the authors with the Algerian authorities before and after the Ordinance's adoption proved to be useless, as no response was given to them about the fate of Rabah Souaiene. This refusal hinders the effectiveness of the remedies sought by his family. Article 2 (3) of the Covenant imposes upon States parties that they make reparation to individuals whose Covenant rights have been violated.<sup>6</sup> Articles 27 to 39 of Ordinance No. 06-01 provide only for financial compensation, subject to the issuance of a declaration of death following an unsuccessful investigation, and article 38 excludes any other form of reparation. In practice, however, no investigation is carried out, either into the fate of the disappeared person or into those responsible for the disappearance. The authors recall that the Committee has considered that the right to an effective remedy necessarily includes the right to adequate reparation and the right to the truth, and it has recommended that the State party should "undertake to ensure that disappeared persons and/or their families have access to an effective remedy and that proper follow-up is assured, while ensuring respect for the right to compensation and the fullest possible redress".<sup>7</sup> The State party has thus violated article 2 (3) of the Covenant with regard to the authors.

3.4 The authors recall the developments in the Committee's jurisprudence regarding enforced disappearances and consider that the mere risk of loss of a person's life in the context of enforced disappearance is enough to justify a finding of a direct violation of article 6 of the Covenant. In the absence of a thorough investigation into the disappearance of Rabah Souaiene, the authors consider that the State party has failed in its obligation to protect his right to life and to take steps to investigate what happened to him, in violation of article 6 (1) of the Covenant.

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<sup>3</sup> 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).

<sup>4</sup> Human Rights Committee, general comment No. 31 (2004), para. 4.

<sup>5</sup> CCPR/C/DZA/CO/3, paras. 7 and 8.

<sup>6</sup> Human Rights Committee, general comment No. 31 (2004), para. 16.

<sup>7</sup> CCPR/C/DZA/CO/3, para. 12.

3.5 The authors recall the circumstances surrounding their son's disappearance, namely the total lack of information about his detention and his state of health and the lack of communication with his family and the outside world. They recall that prolonged arbitrary detention increases the risk of torture and cruel, inhuman or degrading treatment. Referring to the Committee's jurisprudence, the authors also stress that the anguish, uncertainty and distress caused by Rabah Souaiene's disappearance constitute a form of cruel, inhuman or degrading treatment for his family. Accordingly, the authors allege that the State party is responsible for a violation of article 7 in relation to them and to Rabah Souaiene.

3.6 Taking into account that Rabah Souaiene was detained incommunicado without access to a lawyer and without being informed of the reasons for his arrest or the charges against him, that his detention was not mentioned in police custody registers and that there is no official information as to his whereabouts or fate, the authors claim that he was deprived of his right to liberty and security of person and that he was not able to bring proceedings before a court. They therefore consider that Rabah Souaiene was deprived of the guarantees set out in article 9 of the Covenant, in particular of the right to an effective remedy, amounting to a violation of his rights under that article.

3.7 The authors also argue that, in the absence of any investigation by the Algerian authorities, Rabah Souaiene was deprived of his liberty and was not treated with humanity and dignity, in violation of his rights under article 10 of the Covenant.

3.8 Recalling the provisions of article 14 of the Covenant, as well as paragraph 9 of the Committee's general comment No. 32 (2007), the authors claim that all the steps they have taken with the judicial authorities have been unsuccessful. Moreover, the Charter for Peace and National Reconciliation and article 45 of Ordinance No. 06-01 are an impediment to any legal action against State agents, preventing the authors from having their case heard. The State party has thus violated article 14 of the Covenant with regard to them.

3.9 The authors then recall 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. On this point, they refer to the Committee's concluding observations on the second periodic report of Algeria under article 40 of the Covenant,<sup>8</sup> in which the Committee established that disappeared individuals who are still alive and kept incommunicado have their right to recognition as persons before the law, enshrined in article 16 of the Covenant, violated. They therefore assert that, in keeping Rabah Souaiene in detention without officially informing his family and friends, the Algerian authorities denied him 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.

3.10 The authors request the Committee to find that the State party has violated the rights of Rabah Souaiene under articles 6, 7, 9, 10 and 16 of the Covenant, and their own rights under articles 2 (2) and (3) and articles 7 and 14 of the Covenant. Moreover, they request that it urge the State party to respect its international commitments and give effect to the rights recognized in the Covenant and in all the international human rights conventions ratified by Algeria. They also ask that the Committee request the State party to order independent and impartial investigations with a view to: (a) finding Rabah Souaiene and fulfilling the State party's commitment under article 2 (3) of the Covenant; (b) bringing the instigators and the actual perpetrators of this enforced disappearance before the competent civil authorities so that they will be prosecuted in line with article 2 (3) of the Covenant; and (c) ensuring that Rabah Souaiene, if he is still alive, and his family have access to adequate, effective and prompt reparation for the harm suffered, in accordance with article 2 (3) and article 9 of the Covenant, including appropriate compensation commensurate with the gravity of the violation and full and complete rehabilitation, with guarantees of non-repetition. Lastly, they ask the Committee to call upon the Algerian authorities to repeal articles 27 to 39, 45 and 46 of Ordinance No. 06-01, and article 2 of Presidential Decree No. 06-94 of 28 February 2006

<sup>8</sup> CCPR/C/79/Add.95, para. 10.

on State assistance to needy families affected by the involvement of one of their relatives in terrorism.

### **State party's observations**

4. On 9 April 2018, the State party invited the Committee to refer to the background memorandum of the Government of Algeria on handling the issue of disappearances in the light of the implementation of the Charter for Peace and National Reconciliation. As the Committee refused to consider the admissibility of the complaint separately from the merits, on 4 October 2018 the State party again invited the Committee to refer to the background memorandum, challenging the admissibility before the Committee of communications relating to the implementation of the Charter for Peace and National Reconciliation and, consequently, inviting it not to consider the merits.

### **Authors' comments on the State party's observations**

5.1 On 30 June 2018, the authors submitted their comments on the State party's observations regarding admissibility. They stress that such observations were addressed to the Working Group on Enforced or Involuntary Disappearances and were not a response to the present complaint. In this regard, the authors emphasize that the observations 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, thereby demonstrating the Algerian authorities' disregard and disdain for the procedure currently before the Committee. They also emphasize that such observations, which date back to July 2009, are outdated.

5.2 Recalling that no remedy has led to the initiation of a thorough investigation or criminal proceedings and that the Algerian authorities have not provided any tangible evidence suggesting that effective searches were conducted to locate Rabah Souaiene and to identify those responsible for his disappearance, the authors conclude that domestic remedies have been exhausted and that the complaint should be considered admissible by the Committee.

5.3 Referring to the Committee's jurisprudence that the Charter for Peace and National Reconciliation cannot be invoked against individuals submitting individual communications, the authors recall that the provisions of the Charter do not in any way represent adequate handling of the cases of the missing, which would mean respect for the right to truth, justice and full redress.

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

6. The Committee recalls that on 9 April 2018 the State party challenged the admissibility of the communication, referring to the background memorandum on handling the issue of disappearances in the light of the implementation of the Charter for Peace and National Reconciliation. On 17 September and 14 December 2018 and 29 May 2019 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 State party's failure to cooperate by sharing its observations on the present complaint. In conformity with 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.<sup>9</sup>

### **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.

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<sup>9</sup> *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.

7.2 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. 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, on the one hand to examine human rights situations in specific countries or territories or on cases of widespread human rights violations worldwide, and on the other hand, to report publicly on them, do not generally constitute an international procedure of investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol.<sup>10</sup> Accordingly, the Committee considers that the examination of Rabah Souaiene'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 that the authors claim that they have exhausted all available remedies and that, by way of disputing the admissibility of the communication, the State party has simply referred to the background memorandum of the Government of Algeria on the treatment of disappearances in the light 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.<sup>11</sup>

7.4 The Committee also recalls that the State party has not only a duty 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 a duty to prosecute, try and punish anyone held to be responsible for such violations.<sup>12</sup> Although the authors brought the enforced disappearance of their son to the attention of the competent authorities on many occasions, the State party has not undertaken any investigations into this serious allegation. The State party has failed to provide any specific explanation in its comments responding to the case of Rabah Souaiene which would make it possible to conclude that an effective remedy is currently available. Moreover, Ordinance No. 06-01 continues to be applied, despite the Committee's emphasis on the need to bring it into line with the principles of the Covenant.<sup>13</sup> In this respect, the Committee recalls that in its concluding observations regarding the State party's fourth periodic report, it 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".<sup>14</sup> In the 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 authors have also claimed a separate violation of their rights under article 2 (2) and (3) of the Covenant. Recalling its jurisprudence according to which 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, as they can be invoked only in conjunction with other substantive articles of the Covenant,<sup>15</sup> the Committee

<sup>10</sup> 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; *Zaier v. Algeria* (CCPR/C/112/D/2026/2011), para. 6.2; *Mihoubi v. Algeria* (CCPR/C/109/D/1874/2009), para. 6.2; and *Al Daquel v. Libya* (CCPR/C/111/D/1882/2009), para. 5.2.

<sup>11</sup> CCPR/C/DZA/CO/4, paras. 7 and 8.

<sup>12</sup> *Boudjemai v. Algeria* (CCPR/C/107/D/1791/2008), para. 7.4; *Mezine v. Algeria*, para. 7.4; *Berzig v. Algeria* (CCPR/C/103/D/1781/2008), para. 7.4; and *Khirani v. Algeria* (CCPR/C/104/D/1905/2009 and Corr.1), para. 6.4.

<sup>13</sup> CCPR/C/DZA/CO/3, paras. 7, 8 and 13; and CCPR/C/DZA/CO/4, paras. 6, 8, 12, 14 and 34.

<sup>14</sup> CCPR/C/DZA/CO/4, para. 29.

<sup>15</sup> See, e.g., *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.

considers the authors' claims under article 2 (2) and (3) of the Covenant, invoked separately, to be inadmissible under article 3 of the Optional Protocol.

7.6 On the other hand, the Committee considers that the authors have sufficiently substantiated their other allegations for the purposes of admissibility, and it proceeds with its consideration of 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 the information submitted to it, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee notes that the State party has merely referred to its collective and general comments, which it has previously transmitted to the Working Group on Enforced or Involuntary Disappearances and the Committee in connection with other 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.<sup>16</sup>

8.3 The Committee further notes that the State party has not replied to the authors' claims concerning the merits of the case and recalls its jurisprudence, according to which the burden of proof should not lie solely with the author of a communication, especially given that authors and the State party do not always have the same degree of access to evidence and that often only the State party is in possession of the necessary information.<sup>17</sup> In conformity with 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.<sup>18</sup> In the absence of any explanations from the State party in this respect, due weight must be given to the authors' allegations, provided they have been sufficiently substantiated.

8.4 The Committee recalls that, while the term "enforced disappearance" does not appear expressly in any article of the Covenant, enforced disappearance constitutes a single, integrated group of acts that represents a continuing violation of various rights recognized in that treaty, including 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 the person.<sup>19</sup>

8.5 The Committee notes that the authors last saw their son on 18 December 1994. Subsequently, soldiers testified to the authors that they saw Rabah Souaiene on unspecified dates in 2002 while he was in detention at the Boumerdès barracks. The Committee notes that the State party has produced no evidence to establish what happened to Rabah Souaiene and has never even confirmed his detention. It recalls that, in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate of the disappeared person, effectively removes the person from the protection of the law and places his or her life at serious and constant risk, for which the

<sup>16</sup> *Zaier v. Algeria*, para. 7.2; and *Ammari v. Algeria*, para. 8.2.

<sup>17</sup> See, inter alia, *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*, para. 8.3.

<sup>18</sup> *Mezine v. Algeria*, para. 8.3; and *Medjnoune v. Algeria*, para. 8.3.

<sup>19</sup> *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), para. 58.

State is accountable.<sup>20</sup> In the present case, the Committee notes that the State party has produced no evidence to indicate that it fulfilled its obligation to protect the life of Rabah Souaiene. The Committee therefore finds that the State party has failed in its duty to protect Rabah Souaiene's life, in violation of 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 in this case that, after receiving news from the soldiers who claimed to have seen their son in the Boumerdès barracks, the authors never again received any information about his fate or place of detention, despite several successive requests presented to the State authorities. The Committee therefore considers that it is possible that Rabah Souaiene, who disappeared on 18 December 1994, is still being held incommunicado by the Algerian authorities. In the absence of any explanation from the State party, the Committee considers that the disappearance of Rabah Souaiene constitutes a violation of article 7 of the Covenant with regard to him.<sup>21</sup>

8.7 In view of the above, the Committee will not consider separately the claims based on the violation of article 10 (1) of the Covenant.<sup>22</sup>

8.8 The Committee also takes note of the anguish and distress caused to the authors by the disappearance, over 25 years ago, of Rabah Souaiene. The Committee therefore considers that the facts before it reveal a violation of article 7 of the Covenant with regard to the authors.<sup>23</sup>

8.9 With regard to the alleged violation of article 9 of the Covenant, the Committee takes note of the authors' allegations that Rabah Souaiene 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 on this subject, the Committee considers that due weight must be given to the authors' allegations.<sup>24</sup> The Committee therefore finds a violation of article 9 of the Covenant with regard to Rabah Souaiene.<sup>25</sup>

8.10 The Committee also takes note of the authors' allegations that their lack of access to the State party's judicial authorities constitutes a violation of article 14 of the Covenant. The Committee recalls its general comment No. 32 (2007), in which it states, inter alia, that a situation in which a person's attempts to bring a case before the competent courts or tribunals are systematically impeded runs de jure or de facto counter to the guarantee set out in the first sentence of article 14 (1) of the Covenant. In the present case, the Committee notes that all of the steps taken by the authors with the judicial authorities have been unsuccessful. 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.<sup>26</sup> This right also includes the right of access to a court of law, as provided for in article 14 (1) of the Covenant. The Committee therefore finds that the State party has failed in its duty to ensure that the authors have access to a court, in violation of article 14 (1) of the Covenant.

<sup>20</sup> *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 (2018), para. 58.

<sup>21</sup> *Ammari v. Algeria*, para. 8.5; *Mezine v. Algeria*, para. 8.5; *Khirani v. Algeria*, 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.

<sup>22</sup> *Ammari v. Algeria*, para. 8.6.

<sup>23</sup> *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.

<sup>24</sup> *Chani v. Algeria* (CCPR/C/116/D/2297/2013), para. 7.5.

<sup>25</sup> See, inter alia, *Mezine v. Algeria*, para. 8.7; *Khirani v. Algeria*, para. 7.7; and *Berzig v. Algeria*, para. 8.7.

<sup>26</sup> CCPR/C/DZA/CO/4, paras. 11 to 14.

8.11 The Committee is of the view that the intentional removal of a person from the protection of the law constitutes a refusal of the right to recognition as a person before the law, in particular if the efforts of his or her relatives to obtain access to effective remedies have been systematically impeded.<sup>27</sup> In the present case, the Committee notes that the State party has not furnished any explanation concerning the fate or whereabouts of Rabah Souaiene, despite the steps taken by his relatives and the fact that, when he was last seen, Rabah Souaiene was in the hands of the authorities. The Committee finds that Rabah Souaiene's enforced disappearance more than 25 years ago removed him from the protection of the law and deprived him of his right to be recognized as a person before the law, in violation of article 16 of the Covenant.

8.12 Lastly, the Committee notes that although the authors have not expressly invoked a violation of article 2 (3) in conjunction with article 7 of the Covenant, they refer to the obligation imposed on States parties by that provision to ensure that everyone has accessible, effective and enforceable remedies to enforce the rights guaranteed by the Covenant. The Committee recalls the importance it attaches to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of violations of the rights guaranteed under the Covenant.<sup>28</sup> 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 authors have repeatedly alerted the competent authorities to the disappearance of their son without the State party conducting an investigation into the disappearance and without the authors' being informed of Rabah Souaiene's fate. Furthermore, the legal impossibility of applying to a judicial body since the promulgation of Ordinance No. 06-01 continues to deprive Rabah Souaiene and the authors of any access to an effective remedy, given that the Ordinance prohibits using the justice system to shed light on the worst offences, including enforced disappearance.<sup>29</sup> The Committee finds that the facts before it reveal a violation of article 2 (3) read in conjunction with articles 6, 7, 9 and 16 of the Covenant with regard to Rabah Souaiene and of article 2 (3) read in conjunction with article 7 of the Covenant with regard to the authors.

9. 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 articles 6, 7, 9 and 16 of the Covenant and of article 2 (3) read in conjunction with articles 6, 7, 9 and 16 of the Covenant with regard to Rabah Souaiene. 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 authors.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is obliged to: (a) conduct a prompt, effective, thorough, independent, impartial and transparent investigation into the disappearance of Rabah Souaiene and provide the authors with detailed information about the results of its investigation; (b) release Rabah Souaiene immediately if he is still being held incommunicado; (c) in the event of the death of Rabah Souaiene, return his remains to his family in a dignified manner, in accordance with the cultural norms and traditions of the victims; (d) prosecute, try and punish those responsible for the violations committed; (e) provide full reparation, including adequate compensation, to the authors and Rabah Souaiene, if he is alive; and (f) provide appropriate satisfaction for the authors. 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)

<sup>27</sup> *Basnet v. Nepal* (CCPR/C/117/D/2164/2012), para. 10.9; *Tharu et al. v. Nepal*, para. 10.9; and *Serna et al. v. Colombia*, para. 9.5.

<sup>28</sup> *Allioua and Kerouane v. Algeria* (CCPR/C/112/D/2132/2012), para. 7.11.

<sup>29</sup> CCPR/C/DZA/CO/3, para. 7.

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 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 is 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 present Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

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