



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. 2828/2016*, **

<i>Communication submitted by:</i>	Djegdjigua Cherguit (represented by counsel, Nassera Dutour of the Collectif des Familles de Disparu(e)s en Algérie)
<i>Alleged victims:</i>	The author and Hakim Cherguit (the author's son)
<i>State party:</i>	Algeria
<i>Date of communication:</i>	24 March 2015 (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 21 October 2016 (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; recognition as a person before the law; right to privacy; freedom of assembly
<i>Articles of the Covenant:</i>	2 (2) and (3), 6, 7, 9, 10, 14, 16, 17 and 21
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2)

1. The author of the communication is Djegdjigua Cherguit, a national of Algeria. She claims that her son, Hakim Cherguit, born on 21 July 1966 and also an Algerian national, is a victim of enforced disappearance attributable to the State party, in violation of articles 2 (3), 6, 7, 9, 10, 16 and 17 of the Covenant. The author also claims to be a victim of a violation of her rights under articles 2 (2) and (3), 7, 14, 17 and 21 of the Covenant. The Covenant and the Optional Protocol to the Covenant entered into force for the State party on 12 December 1989. The author is represented by Nassera Dutour of the Collectif des Familles de Disparu(e)s en Algérie.

* Adopted by the Committee at its 128th session (2–27 mars 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.



The facts as submitted by the author

2.1 On 31 December 1993, at around 1 a.m., Hakim Cherguit was sleeping at home when he was woken and arrested in the presence of several witnesses by uniformed police officers belonging to the counter-terrorism squad. The officers, whose faces were covered, were accompanied by uniformed gendarmes. They hit him and handcuffed him without giving any explanation. When the author protested, the police officers removed her son's handcuffs but covered his face with his pullover and forced him into the boot of a white car. When the author asked why the police officers were abducting her son and where they were taking him, they told her that he would be released after being questioned. The author was dismayed and worried, especially since her son suffered from a heart problem – a heart murmur – and had to receive regular treatment.

2.2 An hour later, the same police officers returned to the Cherguit family home with Hakim, who had visibly been beaten. They searched the whole house but found nothing, after which they left with Hakim Cherguit. At around 4 a.m., the same police officers took Hakim Cherguit by force to the house of a neighbour named D.Y. The mother of D.Y. had difficulty recognizing Hakim Cherguit because his face was swollen from the blows he had received. The police officers left, taking not only Hakim but also D.Y., who was also reported missing at the time of submission of the present communication.

2.3 The author waited a few days, convinced that her son would be released. When he did not return, she started looking for him. She tried unsuccessfully to obtain information about him at the police station of the seventeenth arrondissement in Kouba; at the Hussein Dey, El Harrach and Bab Ezzouar police stations; and at the military barracks, gendarmeries and prisons in the surrounding area, including the Bab Jdid gendarmerie and the El Harrach prison. In response to her attempts, police and military personnel intimidated and insulted the author, causing her to feel profoundly humiliated.

2.4 Two years later, a cousin of the author's husband told her that Hakim Cherguit had been questioned at the Hussein Dey police station and had then been taken into custody at the Châteauneuf barracks. Subsequently, he had been taken in an ambulance, in a state of ill health, to an unknown destination. The cousin has not seen him since then. The author immediately went to the Châteauneuf barracks but the soldiers there tried to dissuade her from continuing her investigation. However, the author managed to obtain information from other persons who had been detained at the same time as her son but had subsequently been released. They said that Hakim Cherguit had been held at Châteauneuf for 14 months and had then been sent to the Serkadji prison in Algiers. Later, on an unspecified date, the author received a visit from a neighbour whose son was being held in El Harrach prison. The son had sent his mother to let the author know that Hakim was also being held in El Harrach. When the author went there, however, the guards denied that he was being held there. Later, when the neighbour's son was released, he confirmed to the author that he had indeed seen Hakim Cherguit in El Harrach prison.

2.5 On 18 July 1995, 29 February 1996 and again on an unspecified date in 1996, the author submitted complaints to the chief prosecutor of the Court of Algiers to request that the authorities find her son. After submitting these complaints, she received a letter from the public prosecutor of the Court of Hussein Dey, who informed her that, according to a report by the police station of the *daira* (sub-prefecture) dated 15 December 1996, the *daira* police officers did not know the whereabouts of Hakim Cherguit. There was no additional information on whether an investigation would be conducted.

2.6 On 20 April 2003, the author resubmitted her complaint to the chief prosecutor of the Court of Algiers. On an unspecified date, she also submitted a complaint to the public prosecutor of the Court of Abane Ramdane. On 10 January 2005, in response to this complaint, the investigating judge of the Court of Hussein Dey invited the author to a hearing on the disappearance of her son. During this hearing, the author stated that she wished to claim criminal indemnification, but the investigating judge did not act on her request. On 13 April 2005, having heard nothing further since this interview, the author again approached the public prosecutor of the Court of Hussein Dey. On 2 February 2006, having received no reply, she wrote directly to the investigating judge at that court. On 26 February 2006, she also sent a letter to the public prosecutor of the Court of Hussein Dey. In a letter dated 29

April 2006, the investigating judge of the Court of Hussein Dey informed the author that her son's disappearance would not be investigated and that he was closing the case without taking further action. The investigating judge did not provide any explanation for this decision.

2.7 On 30 May 2006, the author asked the commissioner of the National Police in Kouba to issue a certificate attesting to the disappearance of her son. Although this is the first step required in the process of filing a claim for compensation, the author requested the certificate not for the purpose of initiating indemnification proceedings but in order to find out whether her son had been declared dead or missing by the Algerian authorities. On 25 August 2006, the Kouba gendarmerie issued her a certificate attesting to the disappearance of Hakim Cherguit.

2.8 On 15 July 2007, the author was summoned by officials at the *daira* police department in Hussein Dey, who again informed her that the authorities had no information on the fate of her son. They tried to persuade her to apply for a declaration of presumed death with a view to receiving compensation under the procedure established by Ordinance No. 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation. Although it has not been possible to initiate legal proceedings since the promulgation of this Ordinance, the author persevered and resubmitted her complaint to the public prosecutor of the Court of Hussein Dey on 29 September 2007 and 30 March 2008, at the risk of being prosecuted and imprisoned under article 46 of the Ordinance. She received a letter dated 29 September 2009 from the public prosecutor's office of the Court of Algiers asking her to follow the procedures set out in the Ordinance. However, she was not provided with any information on any attempts to ascertain the truth about her son's fate or any documents demonstrating that an investigation had been carried out.

2.9 On 15 April 2010, the author reiterated her request to the public prosecutor of the Court of Hussein Dey to open an investigation. In a report dated 18 May 2011, the prosecutor explained that, as the investigations carried out by the security services had indicated, the search for Hakim Cherguit was still ongoing and no death certificate could be sent to her until his death had been confirmed. After receiving this report, the author received no further response from the Algerian authorities.

2.10 Besides submitting requests to the judicial authorities, the author has sought support from various non-judicial bodies. She has sent letters to the President of the Republic,¹ the Minister of Justice,² the Head of the Government,³ the Minister of the Interior,⁴ the Human Rights Adviser to the Office of the President of the Republic,⁵ the National Human Rights Observatory⁶ and the National Advisory Commission for the Promotion and Protection of Human Rights.⁷ On 7 August 2004, the Office of the Head of Government merely replied that it had received the letter of 3 July 2004 and had forwarded it to the National Advisory Commission for the Promotion and Protection of Human Rights, which was competent to deal with such cases. On 26 January 2008, the author received an identical response.

2.11 The author states that, in a report broadcast on the Al Magharibia television channel in 2014, a person stated that he had been held at the Aïn M'guel facility along with 17 other people, including Hakim Cherguit. Those persons allegedly had been subsequently transferred to the Reggane prison. This person claimed to have been released after having been held in that prison for years, while the other individuals were said to have remained there.

2.12 Despite the author's best efforts, no investigation has been initiated by the competent State authorities. The author stresses that she no longer has the legal right to initiate judicial proceedings following the promulgation of Ordinance No. 06-01 implementing the Charter

¹ Letters dated 6 March 1996, 14 June 2004, 13 April 2005, 26 February 2006, 8 July 2006, 29 September 2007 and 15 April 2010.

² Letters dated 13 April 2005, 26 February 2006, 29 September 2007 and 15 April 2010.

³ Letters dated 26 February 2006, 29 September 2007 and 15 April 2010.

⁴ Letters dated 26 February 2006, 29 September 2007 and 15 April 2010.

⁵ Letter dated 29 September 2007.

⁶ Letter dated 30 December 1998.

⁷ Letters sent in 1998 and 2004 and on 26 February 2006.

for Peace and National Reconciliation. Domestic remedies, which had already proved ineffective, are therefore 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 substantiated, 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 According to the author, since Ordinance No. 06-01 prohibits the opening of legal proceedings, on pain of criminal prosecution, the victims are relieved of any obligation to exhaust domestic remedies. Article 45 of the Ordinance prohibits any complaint related to 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 “any person who, by means of 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 shall be doubled for repeat offences.”

2.14 The author states that the case of Hakim Cherguit was also submitted to the Working Group on Enforced or Involuntary Disappearances on 7 August 2002.

The complaint

3.1 The author alleges that her son is the victim of a disappearance that resulted from the actions of police officers and is therefore attributable to the State party, in accordance with the definition of enforced disappearance set out 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, this practice involves violations of the right to life, the right not to be subjected to torture or 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, 16, 17 and 21 of the Covenant.

3.2 The author submits that Ordinance No. 06-01 constitutes a violation of the State party’s general obligation under article 2 (2) of the Covenant in that this 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, the State party adopted a legislative measure that deprived of effect rights recognized under the Covenant,⁸ particularly the right to have access to an effective remedy against violations of human rights. Since the promulgation of this Ordinance, the author has been prevented from taking legal action. She maintains that a breach, by action or omission, of the obligation imposed by article 2 (2) of the Covenant may engage the international responsibility of the State party.⁹ She states that, despite all the efforts she has made since the Charter for Peace and National Reconciliation and its implementing legislation came into force, her complaints have remained unaddressed. She therefore claims to be a victim of this legislative provision, which violates article 2 (2) of the Covenant.

3.3 The author adds that Ordinance No. 06-01 is contrary to article 2 (3) of the Covenant because it has the effect of preventing any criminal prosecution of alleged perpetrators of enforced disappearances when these persons are State agents. The effect of this law is to grant amnesty for offences committed in the past decade, including the most serious offences such as enforced disappearances. Moreover, the Ordinance prohibits, subject to a penalty of

⁸ See, inter alia, the individual (concurring) opinion of Fabián Salvioli in *Djebbar and Chihoub v. Algeria* (CCPR/C/103/D/1811/2008).

⁹ Human Rights Committee, general comment No. 31 (2004), para. 4.

imprisonment, the use of the justice system to ascertain the fate of victims.¹⁰ The Algerian authorities, including the judiciary, are clearly refusing to establish the responsibility of the security services, including that of the police officers allegedly responsible for the enforced disappearance of Hakim Cherguit. This refusal hinders the effectiveness of the remedies sought by his family. Article 2 (3) of the Covenant requires reparation to be made to individuals whose Covenant rights have been violated.¹¹ Articles 27 to 39 of Ordinance No. 06-01 provide only for simple monetary compensation, conditional on the issuance of a declaration of presumed death following an unsuccessful investigation, while article 38 rules out any other form of reparation. In practice, however, no investigations are carried out into the fate of disappeared persons or into the perpetrators of disappearances. The author recalls that the Committee has held that the right to an effective remedy necessarily includes the right to adequate reparation and the right to the truth, and that it has recommended that the State party “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”.¹² The State party has therefore violated article 2 (3) of the Covenant with regard to the author.

3.4 The author recalls the developments in the Committee’s jurisprudence on enforced disappearance and submits that the mere risk that a person’s life might be lost in the context of such a disappearance is sufficient to justify a finding of 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 that her son has either lost his life or is being held in incommunicado detention, which would put his life in extreme danger, as he would be at the mercy of their jailers, in a situation that is outside the scope of any oversight. In addition, Hakim Cherguit suffered from a heart condition that required proper, regular treatment, which, in all likelihood, was not administered to him in detention. The author therefore submits that the State party has failed to fulfil its obligation to protect Hakim Cherguit’s right to life and to take steps to ascertain what happened to him, in violation of article 6 (1) of the Covenant.

3.5 The author recalls the circumstances surrounding the disappearance of her son, including the total lack of information on his detention or his state of health and the absence of communication with his family and the outside world, and thus takes the view that Hakim Cherguit was subjected to cruel, inhuman or degrading treatment. She further recalls that prolonged arbitrary detention increases the risk of torture and cruel, inhuman or degrading treatment. Referring to the Committee’s jurisprudence, the author also states that the anguish, uncertainty and distress caused by Hakim Cherguit’s disappearance constitute a form of cruel, inhuman or degrading treatment for his family. Accordingly, the author contends that the State party is responsible for a violation of article 7 of the Covenant with regard to both Hakim Cherguit and herself.

3.6 Recalling the guarantee of the right of everyone to liberty and security of person set forth in article 9 of the Covenant, which, moreover, prohibits arbitrary arrest or detention, the author submits that the arrest and detention of Hakim Cherguit constitute an arbitrary deprivation of his liberty and security of person. She therefore maintains that her son has been deprived of the guarantees set out in article 9 of the Covenant, amounting to a violation of that article in his regard.

3.7 The author further states that, as no investigation has been conducted by the Algerian authorities, Hakim Cherguit was deprived of his liberty but was not treated with humanity and dignity, and that this amounts to a violation of article 10 of the Covenant in his regard.

3.8 Recalling the provisions of article 14 of the Covenant and paragraph 9 of the Committee’s general comment No. 32 (2007), the author states that all her attempts to engage with the judicial authorities have been unsuccessful. The author received a letter dated 29 April 2006 informing her that the case had been dismissed by the investigating judge of the Court of Hussein Dey. The public prosecutor of the Court of Hussein Dey sent the author a

¹⁰ CCPR/C/DZA/CO/3, paras. 7–8.

¹¹ Human Rights Committee, general comment No. 31 (2004), para. 16.

¹² CCPR/C/DZA/CO/3, para. 12.

letter dated 29 September 2009, by which she was instructed to follow the compensation procedure but was not given any information on the disappearance of Hakim Cherguit. The author therefore considers herself to be a victim of a violation of her rights under article 14 of the Covenant.

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,¹³ in which the Committee established that disappeared individuals who are still alive and are kept incommunicado have their right to recognition as persons before the law, enshrined in article 16 of the Covenant, violated. She therefore asserts that, by keeping Hakim Cherguit in detention without officially informing his family and relatives, the Algerian authorities have removed her son 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.

3.10 The author, recalling that article 17 of the Covenant protects persons against any arbitrary or unlawful interference with their privacy, home or correspondence, and citing the Committee's jurisprudence,¹⁴ argues that the circumstances in which police officers aggressively forced their way into her home, without a warrant, coupled with the absence of an accessible, effective remedy, constitute a violation by the State party of article 17 of the Covenant, with regard to herself.

3.11 Lastly, the author recalls that article 46 of Ordinance No. 06-01 prohibits collective expression by the families of disappeared persons and human rights defenders, including in the form of political meetings or demonstrations, in violation of the right to freedom of peaceful assembly set out in article 21 of the Covenant. The author, in her capacity as the deputy chairperson of the SOS Disparus office in Algiers, has been the victim of violations of her right to freedom of peaceful assembly. On 5 October 2005, during a peaceful rally, she was aggressively arrested along with other relatives of disappeared persons and taken to the police station in the ninth arrondissement of Algiers. After spending the day at the police station she was released at around 8 p.m. but was traumatized by the brutal nature of the arrest. On several occasions, she has been subjected to verbal intimidation and physical violence by law enforcement officials.¹⁵ She therefore submits that she has been a victim of a violation of article 21 of the Covenant.

3.12 The author requests the Committee to find that the State party has violated articles 6, 7, 9, 10, 16 and 17 of the Covenant with regard to Hakim Cherguit and articles 2 (2) and (3), 7, 14, 17 and 21 of the Covenant with regard to the author. She further requests the Committee to 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. She also asks the Committee to request the State party to order independent and impartial investigations with a view to: (a) locating Hakim Cherguit and fulfilling its obligations under article 2 (3) of the Covenant; (b) bringing the persons responsible for planning and perpetrating this enforced disappearance before the competent civil authorities for prosecution, in accordance with article 2 (3) of the Covenant; and (c) ensuring that Hakim Cherguit, if he is still alive, and his family have access to 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,

¹³ CCPR/C/79/Add.95, para. 10.

¹⁴ *Mezine v. Algeria* (CCPR/C/106/D/1779/2008), para. 8.10; and *Boudjemai v. Algeria* (CCPR/C/107/D/1791/2008), para. 8.10.

¹⁵ The author claims that, on 16 September 2010, during one of the weekly rallies in front of the office of the National Advisory Commission for the Promotion and Protection of Human Rights, law enforcement officers broke up the rally by throwing the author and other families onto a bus. The author was treated so roughly that she had bruises all over her body.

full and complete rehabilitation and guarantees of non-repetition. Lastly, she requests the Committee to urge the Algerian authorities to repeal articles 27–39, 45 and 46 of Ordinance No. 06-01.

State party's observations

4. On 11 January 2017, the State party invited the Committee to refer to the Algerian Government's background memorandum on the treatment of disappearance in the light of the implementation of the Charter for Peace and National Reconciliation.

Lack of cooperation by the State party

5. The Committee recalls that, on 11 January 2017, the State party disputed the admissibility of the communication by referring to the Algerian Government's background memorandum on the treatment of disappearance in the light of the implementation of the Charter for Peace and National Reconciliation. On 21 October 2016, 17 October 2018 and 18 December 2018, the State party was invited to submit observations on the merits of the communication. The Committee notes that it has received no response and regrets the State party's unwillingness 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.¹⁶

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 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 on cases of widespread human rights violations worldwide do not generally constitute an international procedure of investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol.¹⁷ Accordingly, the Committee considers that the examination of Hakim Cherguit's case by the Working Group on Enforced or Involuntary Disappearances does not render the communication inadmissible under this provision.

6.3 The Committee notes that the author claims to have exhausted all available remedies and that, by way of disputing the admissibility of the communication, the State party has simply referred to the Algerian Government's background memorandum on the treatment of disappearance 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 concern that, despite repeated requests, the State party continued to refer systematically to the standard general document (the "aide-memoire") without specifically responding to the claims made by the authors of communications. Consequently, the Committee called on the State party, as a matter of urgency, to cooperate 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.¹⁸

¹⁶ *Mezine v. Algeria*, para. 8.3; and *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.3.

¹⁷ 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.

¹⁸ CCPR/C/DZA/CO/4, paras. 7–8.

6.4 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, in particular alleged violations of the right to life, but also to prosecute, try and punish anyone held to be responsible for such violations.¹⁹ Although the author has brought her son's enforced disappearance to the attention of the competent authorities on many occasions, the State party has failed to conduct a thorough and rigorous investigation into this serious allegation. In the State party's observations on the case of Hakim Cherguit, it has failed to provide any specific explanation that would make it possible to conclude that an effective remedy is now available. In addition, Ordinance No. 06-01 continues to be enforced despite the Committee's insistence that it be brought into line with the principles of the Covenant.²⁰ In this regard, the Committee recalls that, in its concluding observations on the fourth periodic report of the State party, 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.²¹ In the circumstances, the Committee finds that it is not precluded from considering the communication under article 5 (2) (b) of the Optional Protocol.

6.5 The Committee notes that the author has also claimed a separate violation of article 2 (2) and (3) of the Covenant in her regard. Recalling its jurisprudence according to which article 2 lays down general obligations for States parties and cannot, by itself, give rise to a separate claim under the Optional Protocol, as it can be invoked only in conjunction with other substantive articles of the Covenant,²² the Committee considers the claims invoked separately by the author under article 2 (2) and (3) of the Covenant to be inadmissible under article 3 of the Optional Protocol.

6.6 The Committee also notes the author's claim that she is a victim of a violation of her rights under article 21 of the Covenant. It notes, however, that according to the information available, the author does not appear to have made any complaints or representations about this matter to the competent national authorities. It also finds that the author has failed to sufficiently substantiate her claims. Consequently, this part of the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol.

6.7 However, the Committee finds that the author has sufficiently substantiated her other allegations for the purposes of admissibility and proceeds to examine the merits of the claims made under articles 2 (3), 6 (1), 7, 9, 10, 14, 16 and 17 of the Covenant.

Consideration of the merits

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

7.2 The Committee notes that the State party has merely referred to the collective and general comments that it transmitted previously to the Working Group on Enforced or Involuntary Disappearances and the Committee in relation to 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 invoke the Charter against persons who invoke the Covenant or who have submitted, or may submit, communications to the Committee. The Covenant requires the State party to show concern for the fate of each individual and to treat everyone with respect for the inherent dignity of the human person. Ordinance No. 06-01,

¹⁹ *Boudjemai v. Algeria*, 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.

²⁰ CCPR/C/DZA/CO/3, paras. 7–8 and 13; and CCPR/C/DZA/CO/4, paras. 6, 8, 12, 14 and 34.

²¹ CCPR/C/DZA/CO/4, para. 29.

²² 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.

without the amendments recommended by the Committee, promotes impunity in the present case and cannot, in its current form, be considered compatible with the Covenant.²³

7.3 The Committee also notes that the State party has not responded to the author's 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 the author 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.²⁴ 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.²⁵ 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.

7.4 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 a continuing violation of various rights recognized in that treaty, such as the right to life, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and the right to liberty and security of person.²⁶

7.5 The Committee notes that the author last saw her son on 31 December 1993. Subsequently, other persons told the author that they had seen him in detention, on unspecified dates, first at the Hussein Dey police station and then at the Châteauneuf barracks, the Serkadji prison and finally at the El Harrach prison. The Committee notes that the State party has produced no evidence to establish what happened to Hakim Cherguit 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 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.²⁷ In the present case, the Committee notes that the State party has produced no evidence to indicate that it has fulfilled its obligation to protect the life of Hakim Cherguit. The Committee therefore finds that the State party has failed in its duty to protect Hakim Cherguit's life, in violation of article 6 (1) of the Covenant.

7.6 The Committee recognizes the degree of suffering involved in indefinite detention 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 make provision against incommunicado detention. In the present case, it notes that the author heard from various persons who claimed to have seen her son in different places of detention, but subsequently received no further information on his fate or on where he was being held, despite her various attempts to visit these places of detention and her repeated requests to the State authorities. The Committee therefore considers it possible that Hakim Cherguit, who disappeared on 31 December 1993, is still being held incommunicado by the Algerian authorities. In the absence of any explanation from the State party, the Committee finds that Hakim Cherguit's disappearance constitutes a violation of article 7 of the Covenant in his regard.²⁸

²³ *Zaier v. Algeria*, para. 7.2; and *Ammari v. Algeria*, para. 8.2.

²⁴ 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.

²⁵ *Mezine v. Algeria*, para. 8.3; and *Medjnoune v. Algeria*, para. 8.3.

²⁶ *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.

²⁷ *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.

²⁸ *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.

7.7 In view of the foregoing, the Committee will not consider separately the claims relating to the violation of article 10 of the Covenant.²⁹

7.8 The Committee also notes the anguish and distress that the disappearance of Hakim Cherguit for over 26 years has caused to the author. It is therefore of the opinion that the facts before it disclose a violation of article 7 of the Covenant with regard to the author.³⁰

7.9 As to the alleged violation of article 9 of the Covenant, the Committee notes the author's allegations that Hakim Cherguit was arrested arbitrarily, without a warrant, and was not charged or 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 is of the opinion that due weight must be given to the author's allegations.³¹ The Committee therefore finds a violation of article 9 of the Covenant with regard to Hakim Cherguit.³²

7.10 The Committee also notes the author's claims that her inability to obtain 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), which provides 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 of article 14, paragraph 1, first sentence. In the present case, the Committee notes that all the author's attempts to engage with the judicial authorities have proved unsuccessful. It refers to its concluding observations on the fourth periodic report of Algeria, in which it expressed concern about articles 45 and 46 of Ordinance No. 06-01, which infringe the right of every person to have access to an effective remedy against human rights violations.³³ This right includes the right of access to a tribunal, 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 the author's access to a tribunal, in violation of article 14 (1) of the Covenant.

7.11 The Committee is of the view that the intentional removal of a person from the protection of the law constitutes a denial of that person's right to recognition as a person before the law, in particular if the efforts of the victim's relatives to exercise their right to an effective remedy have been systematically impeded.³⁴ In the present case, the Committee notes that the State party has not furnished any explanation concerning the fate or whereabouts of Hakim Cherguit, despite the requests made by his relatives and the fact that he was in the hands of the State party's authorities the last time he was seen. The Committee finds that Hakim Cherguit's enforced disappearance for more than 26 years has 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.

7.12 With regard to the alleged violation of article 17 of the Covenant, the Committee notes that the State party has not provided any justification or clarification as to the forced entry of police officers into Hakim Cherguit's family home in the middle of the night without a warrant. The Committee concludes that the entry of State agents into Hakim Cherguit's family home in such circumstances constitutes unlawful interference with that home, in violation of article 17 of the Covenant.³⁵

7.13 Lastly, the Committee notes that although the author has not expressly invoked a violation of article 2 (3), read in conjunction with article 7, of the Covenant, she refers to the obligation imposed on States parties by that provision to ensure that all individuals have accessible, effective and enforceable remedies for asserting the rights recognized in the

²⁹ *Ammari v. Algeria*, para. 8.6.

³⁰ *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 Hassay v. Libyan Arab Jamahiriya* (CCPR/C/91/D/1422/2005), para. 6.11.

³¹ *Chani v. Algeria* (CCPR/C/116/D/2297/2013), para. 7.5.

³² See, inter alia, *Mezine v. Algeria*, para. 8.7; *Khirani v. Algeria*, para. 7.7; and *Berzig v. Algeria*, para. 8.7.

³³ CCPR/C/DZA/CO/4, paras. 11–14.

³⁴ *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.

³⁵ *Mezine v. Algeria*, para. 8.10; and *Boudjema v. Algeria* (CCPR/C/121/D/2283/2013), para. 8.11.

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.³⁶ It refers to 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 a failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.

7.14 In the present case, the author has repeatedly alerted the competent authorities to her son's disappearance, but the State party has not conducted a thorough and rigorous investigation into that disappearance and the author has received no information on the search and investigation undertaken or on Hakim Cherguit's fate. Furthermore, the legal impossibility of applying to a judicial body since the promulgation of Ordinance No. 06-01 continues to deprive Hakim Cherguit 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 worst offences, including enforced disappearance.³⁷ The Committee finds that the facts before it disclose a violation of article 2 (3), read in conjunction with articles 6, 7, 9, 16 and 17, of the Covenant with regard to Hakim Cherguit and of article 2 (3), read in conjunction with articles 7 and 17, of the Covenant with regard to the author.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of articles 6, 7, 9, 16 and 17 of the Covenant and of article 2 (3), read in conjunction with articles 6, 7, 9, 16 and 17, of the Covenant with regard to Hakim Cherguit. It also finds a violation by the State party of articles 7 and 17, read alone and in conjunction with article 2 (3), and of article 14 of the Covenant with regard to the author.

9. 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 therefore required 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 Hakim Cherguit and provide the author with detailed information about the results of the investigation; (b) release Hakim Cherguit immediately if he is still being held incommunicado; (c) in the event that Hakim Cherguit is deceased, return his remains to his family in a dignified manner, in accordance with the victims' cultural norms and traditions; (d) prosecute, try and punish those responsible for the violations that have been committed; (e) provide full reparation, including adequate compensation, to the author and to Hakim Cherguit, if he is alive; and (f) provide appropriate measures of 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 victims of offences such as torture, extrajudicial execution and enforced disappearance. The State party 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.

10. 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 is found to have 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 Committee's Views and to have them widely disseminated in the official languages of the State party.

³⁶ *Allioua and Kerouane v. Algeria* (CCPR/C/112/D/2132/2012), para. 7.11.

³⁷ CCPR/C/DZA/CO/3, para. 7.