



# 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. 2924/2016\*, \*\*

<i>Communication submitted by:</i>	Rachid Braih (represented by counsel from the Fondation Alkarama)
<i>Alleged victims:</i>	The author and Ahmed Braih (the author's father)
<i>State party:</i>	Algeria
<i>Date of communication:</i>	17 November 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 28 December 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
<i>Articles of the Covenant:</i>	2 (1) and (3), 6 (1), 7, 9, 10 (1), 16 and 23 (1)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2)

1. The author of the communication is Rachid Ahmed Khalil Braih, a stateless person. He claims that his father, Ahmed Khalil Mahmoud Braih, born in Morocco in 1953, was the victim of an enforced disappearance attributable to the State party and that this constitutes a violation of articles 2 (3), 6, 7, 9, 10, 16 and 23 (1) of the Covenant. The author further claims that he and his family are victims of a violation of their rights under articles 2 (1) and (3), 7 and 23 (1) of the Covenant. The Covenant and the Optional Protocol thereto entered into force for the State party on 12 December 1989. The author is represented by counsel from the Fondation Alkarama.

\* 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.



**The facts as submitted by the author**

2.1 Ahmed Braih, the father of seven children, resided primarily in the Tindouf camps in the *wilaya* (district) of Laâyoune, and resided sporadically in Algiers. At the time of his arrest, he was working as a human rights adviser for the Frente Popular para la Liberación de Saguía el-Hamra y de Río de Oro (Frente POLISARIO). Considered one of the founders of the movement, he reported directly to the Secretary-General of the Frente POLISARIO.<sup>1</sup> That organization administers the refugee camps located near the town of Tindouf in the south-western Algerian desert. As a human rights adviser, Ahmed Braih had reported serious violations of the human rights of refugees in the Tindouf camps to the Frente POLISARIO secretariat and had severely criticized those violations, according to his relatives.

2.2 In January 2009, Ahmed Braih was invited by the Frente POLISARIO leadership to give lectures in Algiers on the human rights situation in the camps. His family suspects that he was lured into an ambush by Frente POLISARIO officials, with the acquiescence of the Algerian authorities, so that he could be abducted far from the camps.<sup>2</sup>

2.3 On the morning of 6 January 2009, Ahmed Braih was near the Frente POLISARIO office in the Algiers city centre and was about to go to the University of Algiers to deliver a lecture. As he was waiting on the sidewalk for the driver who was to take him there, he was abducted by plainclothes members of the Algerian security forces. He was forced to get into an unmarked vehicle and was taken to an unknown location.

2.4 Following the disappearance of Ahmed Braih, the author and his older brother, who were then residing in the Tindouf refugee camps, and other members of Ahmed Braih's family sought information on his fate from the Office of the Secretary-General of the Frente POLISARIO. They also sought information numerous times from other Frente POLISARIO officials in Algiers. It was not until two months later, in March 2009, that they received oral confirmation from one of the Frente POLISARIO leaders that their father had been arrested and was being held in the military prison in Blida. The Frente POLISARIO leader claimed to have visited Ahmed Braih on 1 March but said only that he was well. The leader refused to disclose the reasons for Mr. Braih's arrest and detention.

2.5 Ahmed Braih's oldest son then tried to obtain confirmation of this information and to inquire into his father's situation on his own. He repeatedly sought permission from the Frente POLISARIO leadership to visit his father at the latter's place of detention. It was not until early April 2011, more than two years after the abduction, that he was finally allowed to visit his father, on condition that he not speak to anyone of the visit. On the appointed date, he went to the Blida military prison, 50 kilometres south of Algiers, accompanied by a Frente POLISARIO member, and reported to the guard at the entrance to the military court next to the military prison. The guard refused at first to acknowledge that Ahmed Braih was in the prison. After speaking by telephone with his superior, he allowed Ahmed Braih's oldest son and the Frente POLISARIO member to enter.

2.6 Ahmed Braih's son was then taken, by himself, to a small empty room in one of the buildings near the entrance to the prison. After some 20 minutes' wait, soldiers brought Ahmed Braih into the room. The conversation between the victim and his son took place under the surveillance of the soldiers and lasted some 20 minutes. During that time, the son was only able to ask general questions about his father's health and to give him news of each member of the family. Ahmed Braih did not seem to know whether he was to be tried and could not tell his son why he had been imprisoned, stating only that he did not have a lawyer. The son noted, however, that his father was not in good health and seemed to be tired and anxious.

2.7 Ahmed Braih's oldest son went back to the Blida military prison a few days later with clothing, cigarettes and other personal effects that he wanted to give to his father.

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<sup>1</sup> The author provides numerous additional details on the history and goals of the Frente POLISARIO. He notes that the Frente POLISARIO, with active and direct support from Algeria, is calling for the establishment of an independent Saharan State and has unilaterally proclaimed the foundation of the "Sahrawi Arab Democratic Republic", which is not recognized by the United Nations.

<sup>2</sup> The main headquarters of the Frente POLISARIO is located in the centre of the Algerian capital.

However, he was not allowed to see his father again. The guards merely told him that he could leave the personal effects with them and they would pass them on to his father. Over the course of the following weeks, Ahmed Braih's oldest son returned several times to the Blida military prison to ask again to see his father. Each time, however, his request to visit was denied; the guards simply took the personal effects he had brought and assured him that they would hand them over to Ahmed Braih.

2.8 Realizing that he would not be allowed to see his father again, Ahmed Braih's oldest son then went back to the Tindouf camps. Ahmed Braih's family members again asked the leadership of the Frente POLISARIO why he was being held at the Blida military prison, why the Algerian authorities would not allow them to visit him and whether he was to be tried, but they never received a reply.<sup>3</sup> Thus, since early April 2011, when Ahmed Braih's oldest son was allowed to visit him once, his family members have had no news of him despite their constant requests and efforts to that end. The family fears that his abduction and disappearance are the direct result of political differences with the leadership of the Frente POLISARIO and the Algerian authorities, in particular on the management of the Tindouf refugee camps and the human rights violations committed in those camps.

2.9 On an unspecified date, Ahmed Braih's oldest son wrote to the Minister of Justice to explain the situation and ask him to intervene with the authorities in order to allow family members to visit the victim. Having obtained no reply, he sent another letter to the Minister of Defence, also without success. Despite repeated requests for information addressed to the Frente POLISARIO and the Algerian authorities, Ahmed Braih's family has never been told what has happened to him, why he was arrested or whether he has been or will be brought before a court. Neither the Frente POLISARIO nor the Algerian authorities have responded to these requests.

2.10 On 21 October 2014, the author submitted his father's case to the Working Group on Enforced or Involuntary Disappearances. The Working Group wrote to the Algerian authorities but never received a reply. Members of the Frente POLISARIO leadership did, however, meet with several members of the victim's family after the case was registered by the Working Group and after it was referred to in a public report issued by Human Rights Watch.<sup>4</sup> They threatened the family members, stating that it was "in their interest to stop pursuing any legal proceedings in Algeria or at the international level", and asked them not to inquire further into the fate of Ahmed Braih, adding that the problem would be "resolved informally between the Frente POLISARIO and the Algerian authorities". To date, the family of Ahmed Braih has received no other information as to his fate. In view of the threats by Frente POLISARIO agents, several of Ahmed Braih's children, including the author and his older brother, were forced to leave the Tindouf camps and to take refuge in Europe for fear of arrest or retaliation.

2.11 In desperation, on 23 June 2016, the author wrote to the Public Prosecutor of Algiers, describing the facts and circumstances of his father's disappearance and requesting the authorities to open an investigation and to inform the family of its results. The request was left unanswered and the family has received no news of the victim to date.

2.12 The author maintains that domestic remedies vis-à-vis the State party are not effectively available. Persons living in refugee camps under the de facto administration of the Frente POLISARIO cannot bring proceedings before the Algerian courts; the latter systematically refer such persons to the parallel "judicial" authorities set up by the Frente POLISARIO. The author recalls that his older brother sent letters to the Ministers of Justice and Defence and that both letters went unanswered, and that he was then warned by the Frente POLISARIO not to make any further approaches to the Algerian authorities. Moreover, in this case, the victim's two sons whom the family had entrusted with the task of taking the necessary steps to find their father have had to flee the State party, where they

<sup>3</sup> The author adds that, as a result of these efforts and because of their insistence, several members of the family of Ahmed Braih, including the victim's sons and brothers, have been stopped for questioning, threatened with retaliation by Frente POLISARIO officials and even forbidden to leave the camps.

<sup>4</sup> Human Rights Watch, *Off the Radar: Human Rights in the Tindouf Refugee Camps*, 18 October 2014.

faced real risks to their safety. It is therefore now impossible, in practice, for them to take further steps at the domestic level.

### **The complaint**

3.1 The author alleges that his father is the victim of an enforced disappearance that is due to the actions of Algerian security agents and is therefore attributable to the State party, in accordance with the definition of enforced disappearance under article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance. The author states that even though no provision of the Covenant specifically mentions enforced disappearance, the 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 claims violations by the State party of articles 6 (1), 7, 9 (1)–(4), 10 (1), 16 and 23 (1), read alone and in conjunction with article 2 (3), and of article 2 (1), read in conjunction with article 2 (3), of the Covenant.

3.2 The author recalls the supreme nature of the right to life and the State party's obligation not only to refrain from arbitrarily depriving any individual of his or her right to life, but also to prevent and punish any act involving a violation of article 6 of the Covenant, including acts perpetrated by agents of the State. He also recalls the State party's obligation to protect the lives of persons in detention and to investigate any cases of disappearance, as the failure to investigate may in itself constitute a breach of article 6 of the Covenant, including in cases where the disappearance is not attributable to agents of the State. The author states that his father was arrested in January 2009 and, on an unknown date, was placed in detention at the Blida military prison. Ahmed Braih has therefore been the victim of enforced disappearance on two occasions: first, for the period of more than two years that elapsed between the time of his arrest and the only visit that the Blida prison authorities allowed his oldest son to pay him, in April 2011; and second, from the date of that visit to the date of submission of the present communication. Ahmed Braih has now been unlawfully detained for more than eight years. The Algerian authorities should have taken all necessary measures to ensure that his arrest did not become an abduction, that his fundamental rights are respected and that he is not detained incommunicado, for the purpose inter alia of allowing his family to visit him regularly and of recognizing his right to have access to a lawyer to assist him and to challenge the lawfulness of his detention. By depriving Ahmed Braih of all his rights and placing him outside the protection of the law, the Algerian authorities have violated their obligation to safeguard his right to life. These facts demonstrate a failure by the State party to fulfil its obligations and constitute a violation of article 6 (1) of the Covenant.

3.3 The author also recalls that the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment is an absolute right from which no derogation is permissible. Incommunicado detention automatically creates an environment that is conducive to the practice of torture, as the individual is removed from the protection of the law. According to the Committee's jurisprudence, this practice may in itself constitute a violation of article 7 of the Covenant. The State party has an obligation to open an inquiry as soon as an allegation of incommunicado detention is brought to its attention. The Committee has previously stressed that amnesty laws are generally incompatible with the duty of States to investigate and to punish any individual who is responsible for incommunicado detention.<sup>5</sup> The author states that, in the absence of registration or any other procedure that could have been made known to the family, Ahmed Braih is being held incommunicado. Since his oldest son's visit in April 2011, his family has not been able to contact him, no information has been provided as to his fate or whereabouts and no further visits have been authorized. The State party has done nothing to ensure that Ahmed Braih is not detained incommunicado, and no investigation has been carried out. No explanation has been provided by the State party since the time of Ahmed Braih's arrest in January 2009. The impossibility of communicating with the outside world, which is inherent in incommunicado detention, causes such detainees immense psychological suffering that is

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<sup>5</sup> General comment No. 20 (1992), para. 15.

serious enough to fall within the scope of article 7 of the Covenant. The author therefore claims that Ahmed Braih is a victim of a violation of article 7 of the Covenant. With regard to the family of Ahmed Braih, the anguish, distress and uncertainty caused by his disappearance, the authorities' denial and the fact that no investigation has been carried out for more than five years constitute inhuman treatment and, therefore, a violation of article 7, read alone and in conjunction with article 2 (3), of the Covenant.

3.4 The author further recalls that the right to liberty and security of person, as recognized under article 9 of the Covenant, entails the prohibition of arbitrary arrest and detention and requires that the State party provide a number of procedural safeguards. In relation to article 9 of the Covenant, the author alleges that his father is the victim of violations by the State party of: (a) paragraph 1, as Ahmed Braih has not been tried and has been held incommunicado on two occasions; (b) paragraph 2, as the officers who arrested Ahmed Braih neither explained the reasons for his arrest nor presented an arrest warrant, and he has never received any official notification since his arrest; (c) paragraph 3, as Ahmed Braih was not brought before a competent judge following his arrest, nor has he been tried or released, and the eight years that have elapsed since his arrest far exceed the maximum period of 12 days in police custody provided for in the Code of Criminal Procedure for terrorism-related offences; and (d) paragraph 4, as Ahmed Braih has been removed from the protection of the law and thus has never been able to challenge the lawfulness of his detention.

3.5 The author then recalls the fundamental and universal character of the principle that all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person, which is set out in article 10 (1) of the Covenant. Ahmed Braih has been deprived of all contact with the outside world. Incommunicado detention is likely to cause the detainee suffering that is serious enough to qualify as torture. Such detention is also conducive to inhuman treatment. Insofar as Ahmed Braih has been subjected to cruel, inhuman or degrading treatment, in violation of article 7 of the Covenant, he has been, a fortiori, a victim of a violation of article 10 (1), since cruel, inhuman or degrading treatment is, by its very nature, incompatible with respect for the inherent dignity of the human person.

3.6 The author also recalls that everyone has the right to recognition as a person before the law. In that connection, he refers to the Committee's concluding observations on the second periodic report submitted by Algeria under article 40 of the Covenant,<sup>6</sup> in which the Committee established that, when a disappeared individual is still alive and is kept incommunicado, he or she is a victim of a violation of the right to recognition as a person before the law, as enshrined in article 16 of the Covenant. Accordingly, the incommunicado detention of Ahmed Braih constitutes a violation by the State party of article 16 of the Covenant.

3.7 Recalling that article 23 (1) of the Covenant provides that the family is entitled to protection, the author argues that Ahmed Braih's disappearance has deprived his family of a father and a husband, and thus constitutes a violation of that article.

3.8 Under article 2 (3) of the Covenant, any person who alleges that any of his or her rights under the Covenant have been violated must have access to effective remedies. The author states that Ahmed Braih, as a victim of enforced disappearance, is unable in practice to avail himself of any remedy. On the basis of the Committee's jurisprudence, the author recalls the State party's obligation to investigate alleged violations of human rights and to prosecute and punish those responsible, and expresses the view that the Algerian authorities' failure to respond to the requests made by the victim's family constitutes a failure by the State party to fulfil its obligations under article 2 of the Covenant. In the present case, the violation of the right to an effective remedy stems not only from the Algerian authorities' failure to respond, but also from the fact that Ahmed Braih's family members, as refugees living in the Tindouf camps, do not have access to the courts of the State party, which has in practice delegated to the authorities of the Frente POLISARIO the responsibility for adjudicating on any matters brought by Saharan refugees in its territory. This situation

<sup>6</sup> CCPR/C/79/Add.95, para. 10.

constitutes a breach of the State party's obligation to provide an effective remedy. Accordingly, the author requests the Committee to find a violation of article 2 (3) of the Covenant, read alone and in conjunction with articles 6, 7, 9, 10 and 16.

3.9 Lastly, the author takes the view that the inability of Ahmed Braih's family members to deal directly with the Algerian authorities, who consistently refer them to the Frente POLISARIO, constitutes discrimination against Saharan refugees and a failure to observe the scope of the State's obligation under article 2 (1) both *ratione loci* and *ratione personae*. As emphasized by the Committee in its general comment No. 15 (1986), to which it refers in paragraph 10 of its general comment No. 31 (2004), the enjoyment of Covenant rights is not limited to citizens of States parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons who may find themselves in the territory or subject to the jurisdiction of the State party. The State party is therefore under an obligation to ensure respect for the rights set forth in the Covenant, and the effective enjoyment thereof, throughout its territory. Through its de facto delegation to a third party, the Frente POLISARIO, of the responsibility for dealing with complaints and appeals lodged by persons within its territory, the State party is in breach of its obligation under article 2 (1) of the Covenant to ensure to all individuals subject to its jurisdiction, without distinction, the right to an effective remedy recognized under article 2 (3).

3.10 The author requests the Committee to find, first, a violation of articles 6 (1), 7, 9 (1)–(4), 10 (1), 16 and 23 (1) of the Covenant, read alone and in conjunction with article 2 (3), in relation to Ahmed Braih. Second, he requests the Committee to find a violation of articles 7 and 23 (1) of the Covenant, read alone and in conjunction with article 2 (3), and of article 2 (1), read in conjunction with article 2 (3), in relation to the author and his family. The author further asks the Committee to request the State party to: (a) release Ahmed Braih if he is still alive; (b) provide the author with an effective remedy by conducting a thorough and prompt investigation into the enforced disappearance of his father and informing him of the results of the investigation; (c) initiate criminal proceedings against those allegedly responsible for the disappearance of Ahmed Braih, bring them to justice and punish those who are found guilty, in accordance with the State party's international commitments; and (d) adequately compensate the author and Ahmed Braih's beneficiaries for the violations suffered. Lastly, he asks the Committee to urge the Algerian authorities to ensure that Saharan refugees residing in the Tindouf camps have direct and equal access to the Algerian courts, thus ensuring their right to an effective remedy in respect of any violation of a right protected by the Covenant.

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

4. On 28 December 2016 and 10 December 2018, the State party was invited to submit its observations on the admissibility and merits of the communication. The Committee notes that it has received no response and regrets that the State party has not cooperated by sharing its observations on the present complaint. In accordance 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 transmit to the Committee the information in its possession.<sup>7</sup>

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

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

5.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of

<sup>7</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.

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, and whose mandates are to examine and report publicly on human rights situations in specific countries or territories, or cases of widespread human rights violations worldwide, do not generally constitute an international procedure of investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol.<sup>8</sup> Accordingly, the Committee finds that the examination of the case of Ahmed Braih by the Working Group on Enforced or Involuntary Disappearances does not render the communication inadmissible under this provision.

5.3 Regarding the exhaustion of domestic remedies, the Committee recalls that the State party has a duty not only to carry out thorough investigations of alleged violations of human rights brought to the attention of its authorities, particularly violations of the right to life, but also to prosecute, try and punish anyone held to be responsible for such violations.<sup>9</sup> Ahmed Braih's family has repeatedly alerted the competent authorities of the State party to his enforced disappearance, but these authorities have not carried out any investigation in this regard. Furthermore, the State party has not offered any evidence showing that an effective remedy has yet been made available. The Committee is also concerned to note that the State party has not provided any information or observations on the admissibility or merits of the communication.<sup>10</sup>

5.4 In this connection, the Committee recalls that, in its concluding observations on the fourth periodic report of Algeria, it expressed concern about the de facto devolution of authority, especially jurisdictional authority, to the Frente POLISARIO, as such a situation was inconsistent with the State party's obligation to respect and guarantee all Covenant rights for all persons within its territory. The Committee also expressed concern about the situation of victims of violations of Covenant provisions in the Tindouf camps, as such victims did not have access to an effective remedy in the State party's courts.<sup>11</sup> In the circumstances, the Committee finds that, in the present case, there are no obstacles to its consideration of the communication under article 5 (2) (b) of the Optional Protocol.

5.5 The Committee further notes the author's allegations that the State party is in breach of its obligation under article 2 (1) of the Covenant to ensure to all individuals subject to its jurisdiction, without distinction, the right to an effective remedy recognized under article 2 (3). Recalling its jurisprudence according to which the provisions of article 2 lay down general obligations for States parties and cannot, in and of themselves, give rise to a separate claim under the Optional Protocol, and can be invoked only in conjunction with other substantive articles of the Covenant,<sup>12</sup> the Committee finds the author's claim under article 2 (1) of the Covenant, read in conjunction with article 2 (3), to be inadmissible under article 3 of the Optional Protocol.

5.6 The Committee finds that the author has sufficiently substantiated his remaining allegations for the purposes of admissibility, and thus proceeds to examine the merits of his claims under articles 2 (3), 6 (1), 7, 9, 10 (1), 16 and 23 (1) of the Covenant.

#### *Consideration of the merits*

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

<sup>8</sup> See, inter alia, *Y. v. Canada* (CCPR/C/116/D/2314/2013), *Mandić v. Bosnia and Herzegovina* (CCPR/C/115/D/2064/2011), *Tharu et al. v. Nepal* (CCPR/C/114/D/2038/2011), *Ammari v. Algeria* (CCPR/C/112/D/2098/2011) and *Zaier v. Algeria* (CCPR/C/112/D/2026/2011).

<sup>9</sup> *Boudjemai v. Algeria* (CCPR/C/107/D/1791/2008), para. 7.4.

<sup>10</sup> *Belamrnia v. Algeria* (CCPR/C/118/D/2157/2012), para. 4; *Khelifati v. Algeria* (CCPR/C/120/D/2267/2013), para. 4.

<sup>11</sup> CCPR/C/DZA/CO/4, para. 9.

<sup>12</sup> 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.

6.2 The Committee notes that the State party has not responded to the author's allegations and recalls its jurisprudence according to which the burden of proof should not rest solely on 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.<sup>13</sup> In accordance 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 transmit to the Committee the information in its possession.<sup>14</sup> 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.

6.3 The Committee recalls that, while the Covenant does not explicitly use the term "enforced disappearance" in any of its articles, enforced disappearance constitutes a unique and integrated series of acts that represents continuing violation of various rights recognized in that treaty, such as the right to life, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and the right to liberty and security of person.<sup>15</sup>

6.4 The Committee notes that Ahmed Braih was last seen by the author's older brother in April 2011, while he was being held at the military prison in Blida. It further notes that the State party has not provided any information that could shed light on the fate of Ahmed Braih and has never even confirmed his detention. The Committee recalls that, in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.<sup>16</sup> 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 Ahmed Braih. Accordingly, it concludes that the State party has failed in its obligation to protect the life of Ahmed Braih, in violation of article 6 (1) of the Covenant.

6.5 The Committee also 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. It notes in the present case that after Ahmed Braih's oldest son was able to see him at the Blida military prison in April 2011, his family members, including the author, were never again given access to any information whatsoever about his fate, despite their attempts to visit him at the Blida prison and their repeated requests for information from the competent authorities of the State party. The Committee is therefore of the view that Ahmed Braih is potentially still being held incommunicado by the Algerian authorities and is a victim, together with his family, of an enforced disappearance lasting from 6 January 2009 to April 2011 and from April 2011 to date, in violation of article 7 of the Covenant in respect of Ahmed Braih.<sup>17</sup>

6.6 In view of the foregoing, the Committee will not consider separately the claims relating to the violation of article 10 of the Covenant.<sup>18</sup>

<sup>13</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* (CCPR/C/103/D/1781/2008), para. 8.3.

<sup>14</sup> *Mezine v. Algeria*, para. 8.3, and *Medjnoune v. Algeria*, para. 8.3.

<sup>15</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.

<sup>16</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>17</sup> *Ammari v. Algeria*, para. 8.5; *Mezine v. Algeria*, para. 8.5; *Khirani v. Algeria* (CCPR/C/104/D/1905/2009), 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>18</sup> *Ammari v. Algeria*, para. 8.6.



6.7 The Committee also notes the anguish and distress that the disappearance of Ahmed Braih on two occasions has caused to the author and his family and is of the opinion that the facts before it disclose a violation of article 7, read alone and in conjunction with article 2 (3), of the Covenant with regard to these individuals.<sup>19</sup>

6.8 As to the claims concerning a violation of article 9 of the Covenant, the Committee notes the author's allegations that Ahmed Braih 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 should be given to the author's allegations.<sup>20</sup> The Committee therefore finds a violation of article 9 of the Covenant in respect of Ahmed Braih.<sup>21</sup>

6.9 The Committee also recalls that the intentional removal of a person from the protection of the law constitutes a denial of his or her 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.<sup>22</sup> In the present case, the Committee notes that the State party has not provided any explanation concerning the fate or whereabouts of Ahmed Braih, despite the requests made by his relatives and the fact that he was in the hands of the State party's authorities when he was last seen. The Committee concludes that the enforced disappearance of Ahmed Braih for more than eight years 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.

6.10 In view of the foregoing, the Committee will not consider separately the claims relating to the violation of article 23 (1) of the Covenant.<sup>23</sup>

6.11 The author also invokes article 2 (3) of the Covenant, which requires States parties to ensure that all individuals have accessible, effective and enforceable remedies for asserting the rights recognized in 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>24</sup> It also 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 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.

6.12 In the present case, the author and his family have repeatedly alerted the competent authorities to the disappearance of Ahmed Braih, but the State party has not inquired into this disappearance and the author has received no information in this regard. In addition, the legal impossibility of applying to a judicial body as a result of the de facto devolution of the State party's jurisdictional authority to the Frente POLISARIO, and the lack of effective remedies for persons in the Tindouf camps, continue to deprive Ahmed Braih and the author of any access to an effective remedy.<sup>25</sup> The Committee concludes that the facts before it disclose a violation of article 2 (3), read in conjunction with articles 6, 7, 9 and 16, of the Covenant in respect of Ahmed Braih, and of article 2 (3), read in conjunction with article 7, of the Covenant in respect of the author.

7. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 6, 7, 9 and 16 of the

<sup>19</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>20</sup> *Chani v. Algeria* (CCPR/C/116/D/2297/2013), para. 7.5.

<sup>21</sup> See, inter alia, *Mezine v. Algeria*, para. 8.7; *Khirani v. Algeria*, para. 7.7; and *Berzig v. Algeria*, para. 8.7.

<sup>22</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>23</sup> *Boudjema v. Algeria* (CCPR/C/121/D/2283/2013), para. 8.12, and *Bouzeriba v. Algeria* (CCPR/C/111/D/1931/2010), para. 8.10.

<sup>24</sup> *Allioua and Kerouane v. Algeria* (CCPR/C/112/D/2132/2012), para. 7.11.

<sup>25</sup> CCPR/C/DZA/CO/4, paras. 9–10.

Covenant and of article 2 (3), read in conjunction with articles 6, 7, 9 and 16, of the Covenant in respect of Ahmed Braih. It also finds a violation by the State party of article 7, read alone and in conjunction with article 2 (3), of the Covenant in respect of the author.

8. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is obligated to: (a) conduct a prompt investigation that is effective and thorough, impartial and independent, and transparent into the disappearance of Ahmed Braih and provide the author with detailed information about the results of the investigation; (b) immediately release Ahmed Braih if he is still being held incommunicado; (c) in the event that Ahmed Braih is deceased, 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 that have been committed; (e) provide full reparation, including adequate compensation, to the author and to Ahmed Braih, if he is alive; and (f) provide appropriate measures of satisfaction to the author. Notwithstanding the de facto devolution of authority by the State party to the Frente POLISARIO, the State party should also ensure that the right to an effective remedy of persons in the Tindouf camps who are victims of crimes such as torture, extrajudicial execution and enforced disappearance is not infringed. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this regard, as already mentioned in the Committee's concluding observations on the fourth periodic report of Algeria, the Committee takes the view that, as an obligation emanating from article 2 (1) of the Covenant, the State party should ensure the liberty and security of persons as well as access to effective remedies for all persons within its territory, including those in the camps at Tindouf, who claim to be the victim of a violation of the Covenant's provisions.

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