



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. 2808/2016*, **

<i>Communication submitted by:</i>	Mohamed Djaou (represented by counsel from Fondation Alkarama)
<i>Alleged victims:</i>	The author and Tewfik Djaou (the author's son)
<i>State party:</i>	Algeria
<i>Date of communication:</i>	26 June 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 14 September 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	24 October 2022
<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 (2) and (3), 6 (1), 7, 9, 10, 16, 19 and 23 (1)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2)

1. The author of the communication is Mohamed Djaou, an Algerian national born on 28 September 1936. He claims that his son, Tewfik Djaou, born on 22 October 1962, also an Algerian national, is a victim of enforced disappearance attributable to the State party, in violation of articles 6, 7, 9, 10, 16 and 23 (1) of the Covenant, and of article 2 (3), read alone and in conjunction with articles 6, 7, 9, 10, 16 and 23 (1). The author also claims that he himself is a victim of a violation of his rights under article 2 (3), article 7 read alone and in conjunction with article 2 (3), and article 23 (1) of the Covenant. Furthermore, the author claims a violation of article 2 (2) read in conjunction with articles 2 (3) and 19 of the

* Adopted by the Committee at its 136th session (10 October–4 November 2022).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobayyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



Covenant.¹ Both the Covenant and the Optional Protocol entered into force for the State party on 12 December 1989. The author is represented by counsel.

The facts as submitted by the author

2.1 The author is a retired police officer and a veteran of the National Liberation Army, which was established in 1954 to fight for Algerian independence. In view of the skills he had acquired, the Intelligence and Security Department asked him on numerous occasions to lead an armed militia in Constantine that would be fighting armed Islamist groups. He was often summoned to the barracks of the Department in Bellevue, where the officers tried to persuade him for this purpose. When he refused, they called him a traitor, insulted him and threatened him with reprisals. A few weeks after he was last summoned to the barracks, the officers carried out their threats by abducting his son.

2.2 On 29 October 1997, Tewfik Djaou – who worked as a jeweller and owned a business in Constantine – was in his jewellery shop with his brother Farid when, around 9 a.m., armed agents of the Intelligence and Security Department, some in civilian clothes and others in uniform, arrived at the premises in several vehicles, including white vehicles of the kind usually used by the intervention units of the Department. In addition to the two brothers, seven employees were on the premises.²

2.3 The military officials, who had come in large numbers (several dozen), closed the street to traffic. Only three of them entered and searched the shop before taking all the jewellery displayed in the window. They then told Tewfik Djaou to open the safe before emptying it of its contents.³ After placing the jewellery and money in bags, they handcuffed Tewfik Djaou and forced him into the boot of one of the vehicles to take him to an unknown destination. His relatives have not seen him since that day.

2.4 On hearing of his son's arrest, the author, realizing that the Intelligence and Security Department had carried out its threats, immediately went to the barracks in Bellevue and asked to see his son. The officers there sent him away, telling him that his son was not being held at the barracks. The author then contacted an agent whom he had known since the war of independence, having fought alongside him, but the agent had no information, as he had been on leave at the time of the events.

2.5 In January 1998, a person who had recently been released from the Bellevue barracks by the Intelligence and Security Department told the author that, on the day of this person's release, his son had been in the barracks. The author went back to the barracks, hoping to hear news of his son, but was once again turned away by the officers in the guardroom. He went to other army barracks where he thought his son might have been transferred, but to no avail.

2.6 In May 1998, a second person who had been released took the initiative to inform the author that he had been detained at the Bellevue barracks with the author's son and that his son had still been alive at the time of his release but had been severely tortured. This witness said that Tewfik Djaou had been violently beaten and electrocuted during questioning. He also told him that, during the winter, Tewfik Djaou had regularly been taken into the yard of the barracks, completely naked, and tied underneath a gutter in the freezing cold. Since this last testimony, the author has received no further information on the fate of his son, whose detention the authorities have continued to deny.

2.7 On an unspecified date, the author referred the matter to the public prosecutor of Constantine, who had territorial jurisdiction but refused to register his complaint. He also laid the matter before the military prosecutor, alleging that his son had been arrested by the army

¹ These claims are made by the author in his comments of 15 March 2017 on the State party's observations.

² One of the employees recognized his cousin among the Intelligence and Security Department agents who entered the premises.

³ They stole several kilograms of jewellery worth an estimated 2,150,000 dinars, in addition to jewellery deposited by customers and that brought to the workshop for repairs, worth 600,000 dinars, and 240,000 dinars in cash that was in the safe.

and, according to several witnesses, detained at the Bellevue barracks run by the Intelligence and Security Department. Once again, he was met with a refusal.

2.8 Tewfik Djaou's wife also tried to make representations to the same judicial authorities, but without success. In 2006, finding herself in a particularly difficult situation, not least because she could not become the legal guardian of her minor children, she took administrative steps to have his disappearance recognized so that a death certificate could be drawn up that would allow her to obtain legal guardianship of her children. On 22 July 2006, the National Gendarmerie of Dark Al Watani drew up a certificate of disappearance at her request, attesting to the victim's disappearance since 29 October 1997 and indicating that an investigation had been initiated but had not yielded any results.⁴ In fact, no investigation has been carried out. Neither the seven witnesses to the abduction, nor the victim's brother, nor the parties claiming damages⁵ have been summoned for questioning in connection with this alleged investigation. It is therefore clear that the State party, despite having issued a certificate attesting to Tewfik Djaou's disappearance, has not conducted any investigation into the circumstances surrounding that disappearance.

2.9 On 11 December 2007, the author submitted his son's case to the Working Group on Enforced or Involuntary Disappearances. The Working Group wrote to the Algerian authorities but never received a reply.

2.10 The author points out that it is now legally impossible for him to bring 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 futile and ineffective, have now become unavailable. The Charter for Peace and National Reconciliation provides that "no one, whether in Algeria or abroad, has the right to use or make 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 integrity of all the agents who have served it with dignity, or tarnish the image of Algeria abroad", and rejects "all allegations holding the State responsible for deliberate disappearances". The Charter further provides that "reprehensible acts on the part of agents of the State, which have been punished by law whenever they have been proved, cannot be used as a pretext to discredit the security forces as a whole, who were doing their duty for their country with the support of its citizens".

2.11 According to the author, since Ordinance No. 06-01 prohibits and criminalizes the opening of legal proceedings, 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 judicial authority. Furthermore, article 46 of the Ordinance establishes that:

Anyone who, through his or her spoken or written statements or any other act, uses or makes use of the wounds caused by the national tragedy to undermine the institutions of the People's Democratic Republic of Algeria, weaken the State, impugn the integrity of its agents who have 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.

2.12 The author adds that the effect of this law is to grant amnesty for crimes committed in the past decade, including the most serious crimes, such as enforced disappearance. Moreover, the law prohibits, on pain of imprisonment, the use of the justice system to clarify

⁴ The author states that the National Gendarmerie, like the Intelligence and Security Department, is under the Ministry of Defence and is not authorized to investigate the actions of colleagues working for the Department.

⁵ The plaintiffs were persons who owned the stolen jewellery and money.

the fate of victims.⁶ The Algerian authorities, including the judicial authorities, are manifestly refusing to establish the responsibility of the security services, whose agents are allegedly responsible for the enforced disappearance of Tewfik Djaou. Such refusal hinders the effectiveness of the remedies sought by his family.

The complaint

3.1 The author claims that his son is the victim of an enforced disappearance resulting from actions by agents of the Algerian security forces and thus attributable to the State party, in accordance with the definition of enforced disappearance set forth in article 7 (2) (i) of the Rome Statute of the International Criminal Court and 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 of enforced disappearance 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 the rights of Tewfik Djaou under articles 2 (3), 6 (1), 7, 9 (1–4), 10 (1), 16 and 23 (1), as well as his own rights under articles 2 (3), (7) and 23 (1) of the Covenant.

3.2 The author recalls the paramount nature of the right to life and the obligation of the State party to refrain from arbitrarily depriving an individual of the right to life and to prevent and punish any act involving a violation of article 6 of the Covenant, including when the perpetrator or perpetrators of such acts are agents of the State. He also recalls that the State party is under an obligation to protect the lives of persons in detention and to investigate any cases of disappearance. In this regard, the State party's failure to conduct an investigation may in itself constitute a breach of article 6, including in cases where the disappearance is not the work of State agents. Tewfik Djaou's disappearance occurred in the wake of the author's refusal to join the Algerian militias operating under State control. Tewfik Djaou's family and friends have not heard from him in more than 18 years. His detention should have been recorded in a register, in accordance with the Code of Criminal Procedure. These factors, taken together with the absence of an investigation, are proof of the State party's failure to comply with its obligations and constitute a violation of article 6 (1) of the Covenant, read alone and in conjunction with article 2 (3), in respect of the disappeared person.

3.3 The author 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, such a practice may in itself constitute a violation of article 7 of the Covenant. The author claims that, in the absence of registration or any other procedure that could have been made known to the family, Tewfik Djaou has been held in incommunicado detention for more than 18 years. During this time, his family have been unable to communicate with him. The impossibility of communicating with the outside world, which is inherent in incommunicado detention, causes the detainee immense psychological suffering that is serious enough to fall within the scope of article 7 of the Covenant. Moreover, according to the testimonies of fellow detainees who were subsequently released, Tewfik Djaou was subjected to severe acts of torture while he was being questioned at the barracks of the Intelligence and Security Department in Bellevue, Constantine. Tewfik Djaou was said to have been beaten, electrocuted, stripped naked and exposed to extreme temperatures, acts that undoubtedly constitute torture. The author therefore argues that he was the victim of a violation of article 7 of the Covenant.

3.4 With regard to the author and Tewfik Djaou's family, the anguish, distress and uncertainty caused by Tewfik Djaou's disappearance, the authorities' denials and the absence of an investigation over a period of more than 18 years constitute inhuman treatment and, consequently, a violation of their rights under article 7 of the Covenant, read alone and in conjunction with article 2 (3).

⁶ CCPR/C/DZA/CO/3, paras. 7–8.

3.5 The author alleges that his son is a victim of violations attributable to the State party under: (a) article 9 (1), because Tewfik Djaou was arbitrarily deprived of his liberty by agents of the Intelligence and Security Department who were under the authority of the Algerian army; (b) article 9 (2), because the agents who arrested Tewfik Djaou did so without communicating the reasons for the arrest or presenting a warrant and he did not receive official notification following his arrest; (c) article 9 (3), because Tewfik Djaou was neither brought before a competent judge after his arrest, nor tried, nor released, and more than 18 years have passed since his arrest, far exceeding the maximum period of 12 days of police custody prescribed in the Code of Criminal Procedure for terrorism-related offences; and (d) article 9 (4), because Tewfik Djaou was removed from the protection of the law and was thus unable to challenge the legality of his detention.

3.6 Since Tewfik Djaou was subjected to cruel, inhuman and degrading treatment, in violation of article 7 of the Covenant, he was also 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. Incommunicado detention is not only likely to cause the detainee suffering serious enough to qualify as torture but also encourages the commission of inhuman acts.

3.7 The author further claims that the incommunicado detention of Tewfik Djaou constitutes a violation of article 16 of the Covenant attributable to the State party. In this connection, the author refers to the Committee's concluding observations on the second periodic report of Algeria under article 40 of the Covenant,⁷ in which the Committee established that disappeared persons who are still alive and are being detained incommunicado were suffering a violation of their right to recognition as persons before the law, as enshrined in article 16 of the Covenant.

3.8 Noting that article 23 (1) of the Covenant provides for the right to protection of the family, the author argues that Tewfik Djaou's disappearance deprived his family of a son, a father and a husband and therefore constituted a violation of that article in respect of Tewfik Djaou and the author and his family.

3.9 The author recalls that article 2 (3) of the Covenant guarantees access to effective remedies for any person claiming a violation of any of the rights protected by the Covenant. Tewfik Djaou, as a victim of enforced disappearance, is de facto unable to exercise any remedy. Drawing on the jurisprudence of the Committee, the author recalls the obligation of the State party to investigate alleged violations of human rights and to prosecute and punish the perpetrators and considers that the lack of response from the Algerian authorities to the requests made by him and the victim's family constitutes a breach of the State party's obligations under article 2 of the Covenant. Ordinance No. 06-01, specifically its article 45, constitutes a breach of the State party's obligation to ensure an effective remedy. Accordingly, the author asks the Committee to find a violation of Tewfik Djaou's rights under article 2 (3), read alone and in conjunction with articles 6, 7, 9, 10, 16 and 23 of the Covenant.

3.10 Firstly, the author requests the Committee to find a violation of articles 2 (3), 6 (1), 7, 9 (1-4), 10 (1), 16 and 23 (1) of the Covenant, as well as of article 2 (3) read in conjunction with articles 6, 7, 9, 10, 16 and 23, in respect of Tewfik Djaou. Secondly, he requests it to find a violation of articles 2 (3), 7 read alone and in conjunction with article 2 (3), and 23 (1) of the Covenant, in relation to himself. The author further requests the Committee to urge the State party to: (a) release Tewfik Djaou, if he is still alive; (b) provide him with an effective remedy in the form of a comprehensive and thorough investigation into the enforced disappearance of his son and to inform him of the results of the investigation; (c) prosecute, try and punish the persons responsible for the disappearance of Tewfik Djaou, in conformity with the State party's international commitments; and (d) provide adequate compensation to the author and the dependants of Tewfik Djaou for the violations suffered.

State party's observations

4.1 On 10 November 2016, the State party invited the Committee to refer to the background memorandum of the Government of Algeria on handling the issue of

⁷ CCPR/C/79/Add.95, para. 10.

disappearances in the light of the implementation of the Charter for Peace and National Reconciliation. In the memorandum, the Government contests the admissibility of communications submitted in connection with the implementation of the Charter.

4.2 On 12 September 2022, the State party reiterated its reference to the memorandum and indicated that all measures had been taken at the national level to investigate. In this regard, the State party submits that, following Tewfik Djaou's disappearance, the police initiated an investigation and contacted his brother, who reportedly stated that armed individuals had come to the jewellery shop where Tewfik Djaou worked, claiming to be members of the Algerian security services and, after seizing all the jewellery, had taken Tewfik Djaou to an unknown destination. According to the State party, the judge ordered investigation proceedings against persons unknown and Tewfik Djaou's brother reiterated before the judge what he had stated to the police. The State party therefore considers that there is no evidence and that the communication before the Committee must be declared inadmissible.

Author's comments on the State's party's observations

5.1 On 15 March 2017, the author submitted comments on the State party's observations dated 10 November 2016. He emphasizes that the observations are inappropriate, since they refer to a standard document dating from July 2009 that was addressed to the Working Group on Enforced or Involuntary Disappearances, not to the Committee. The State party's observations make no mention of the specifics of the present case and do not address the particular circumstances of Tewfik Djaou's disappearance.

5.2 According to the author, the State party's response calls into question its obligation to cooperate in good faith with the Committee, a duty that arises – as the Committee reiterated in paragraph 15 of its general comment No. 33 (2008) – from an application of the principle of good faith to the observance of all treaty obligations.

5.3 According to the Committee's established jurisprudence, the State party may not use the provisions of the Charter for Peace and National Reconciliation against persons who invoke the provisions of the Covenant or who have submitted, or may submit, communications to the Committee.⁸ The author considers that neither the State party's adoption of the Charter nor its adoption of the "comprehensive domestic settlement mechanism" constitute measures that adequately fulfil its treaty obligations to investigate, prosecute and provide reparation and that such measures cannot be validly invoked before the Committee or constitute grounds for the inadmissibility of a communication.

5.4 Lastly, the author considers that the State party has breached its general obligation under article 2 (2) of the Covenant, read in conjunction with articles 2 (3) and 19. The principal reason why remedies are ineffective in the State party is that, under article 45 of Ordinance No. 06-01, it is legally impossible for the author to lodge an appeal before the State party's courts. This Ordinance has made it legally impossible to apply for an effective remedy within the legal framework of the State party, in violation of article 2 (3) of the Covenant. Furthermore, article 46 of the Ordinance criminalizes all peaceful expression of complaints and all public discussion of the alleged events, in violation of the author's right to freedom of expression under article 19 of the Covenant. For as long as the above-mentioned provisions of the Charter for Peace and National Reconciliation remain applicable, the families of victims have no legal means of asserting their rights under article 2 (3) of the Covenant or even expressing themselves publicly regarding the violations suffered by their relatives, which could result in being sentenced to up to 5 years' imprisonment, in violation of article 19 of the Covenant.

5.5 On 30 September 2022, the author expressed his surprise that the State party, six years after its response of 10 November 2016 – and for the first time on preliminary issues – invoked an alleged investigation by a local court and falsely claimed that Tewfik Djaou's family was a party to it. The author also notes that the State party provides no response on the merits of the case.

⁸ *Fedsi v. Algeria* (CCPR/C/111/D/1964/2010), para. 7.2.

Lack of cooperation by the State party

6. The Committee recalls that on 10 November 2016 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 19 July 2022 and 20 September 2022, the Committee refused to allow the admissibility of the complaint to be considered separately from the merits. The State party was therefore invited to submit its observations on the merits of the communication. The Committee notes that the State party has continued to challenge the admissibility of the communication without explaining why it did not present the new arguments in the course of its observations of 10 November 2016 on the admissibility of the communication. Furthermore, the State party has not provided observations on the merits, as requested by the Committee on two occasions. The Committee 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.⁹

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the disappearance was reported to the Working Group on Enforced or Involuntary Disappearances. It recalls, however, that the special procedures and mechanisms of the Human Rights Council do not generally constitute a procedure of international investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol.¹⁰ Accordingly, the Committee considers that the examination of Tewfik Djaou'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 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 connection, the Committee recalls that it has regularly 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.¹¹ The Committee has 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.

⁹ See, inter alia, *Rsiwi v. Algeria* (CCPR/C/130/D/2843/2016), para. 6; *Dafar v. Algeria* (CCPR/C/130/D/2580/2015), para. 4; *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.

¹⁰ See, inter alia, *Souaiene and Souaiene v. Algeria* (CCPR/C/128/D/3082/2017), para. 7.2; *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; *Al Daquel v. Libya* (CCPR/C/111/D/1882/2009), para. 5.2; and *Mihoubi v. Algeria* (CCPR/C/109/D/1874/2009), para. 6.2.

¹¹ *Rsiwi v. Algeria*, para. 7.3; *Berkaoui v. Algeria* (CCPR/C/130/D/2639/2015), para. 7.3; *Souaiene and Souaiene v. Algeria*, para. 7.3; *Bendjael and Bendjael v. Algeria* (CCPR/C/128/D/2893/2016), para. 7.3; *Cherguit v. Algeria* (CCPR/C/128/D/2828/2016), para. 6.3; and *Habouchi v. Algeria* (CCPR/C/128/D/2819/2016), para. 7.3.

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.¹² In the present case, the Committee notes that the author and Tewfik Djaou's wife brought the enforced disappearance of Tewfik Djaou to the attention of the competent authorities on many occasions. The Committee notes the State party's assertion that an investigation was opened but observes that this assertion is disputed by the author, who claims that Tewfik Djaou's family was never summoned as part of an investigation and that the State party does not produce any documents to support its statements about the opening of an investigation. Even assuming that such an investigation had been ordered, the Committee notes that the State party has not produced any evidence of its opening or conduct. The Committee considers that the State party has also failed to provide any specific explanation in its comments regarding the case of Tewfik Djaou that would make it possible to conclude that an effective remedy is currently available, given that Ordinance No. 06-01, which effectively limits the scope of application of the Covenant, continues to be applied, despite the Committee's recommendations to bring it into line with the Covenant.¹³ 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 Furthermore, since submitting a communication five years after the exhaustion of domestic remedies¹⁴ can amount to an abuse of the right of submission – and even though the State party has not raised this point in the present case – the Committee recalls that the continuous nature of enforced disappearance implies a continuous obligation to investigate such cases, which in this case is made impossible by Ordinance No. 06-01 and its effects.¹⁵ The Committee therefore considers that, in the circumstances of the case, and in particular given that Ordinance No. 06-01 makes it impossible to seek an investigation into the disappearance of Tewfik Djaou, the present communication does not constitute an abuse of the right of submission.

7.6 The Committee notes the author's claim that the State party has not fulfilled its obligations under article 2 (2) of the Covenant, read in conjunction with articles 2 (3) and 19, since, in adopting Ordinance No. 06-01, the State party has taken a legislative measure that deprives of effect the right to an effective remedy against human rights violations, in breach of article 2 (3) of the Covenant, and that, moreover, criminalizes all peaceful expression or public discussion regarding the alleged events, in violation of the author's right to freedom of expression under article 19 of the Covenant. In the present case, the Committee considers that the author has not provided sufficient information to explain how Ordinance No. 06-01 was effectively applied to him in terms of article 19 of the Covenant.¹⁶ The Committee recalls its jurisprudence¹⁷ according to which the provisions of article 2 cannot be invoked as a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to abide by its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim. Consequently, the Committee considers that these claims have not been sufficiently substantiated and are therefore inadmissible under article 2 of the Optional Protocol.

7.7 The Committee notes that the author has also claimed a separate violation of his and Tewfik Djaou's rights under article 2 (3) of the Covenant. The Committee, recalling its

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

¹³ *Rsiwi v. Algeria*, para. 7.4; *Berkaoui v. Algeria*, para. 7.4; *Souaiene and Souaiene v. Algeria*, para. 7.4; *Bendjael and Bendjael v. Algeria*, para. 7.4; *Cherguit v. Algeria*, para. 6.4; and *Habouchi v. Algeria*, para. 7.4.

¹⁴ Committee's rules of procedure, rule 99 (c). See also *Drif and Rafrat v. Algeria* (CCPR/C/134/D/3320/2019), para. 7.5.

¹⁵ *Rsiwi v. Algeria*, para. 7.6; *Berkaoui v. Algeria*, para. 7.5; and *Dafar v. Algeria*, para. 5.4.

¹⁶ *Rsiwi v. Algeria*, para. 7.5; and *Boutarsa v. Algeria* (CCPR/C/135/D/3010/2017), para. 7.6.

¹⁷ *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.4.

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,¹⁸ considers the author's claim under article 2 (3) of the Covenant, invoked separately, to be inadmissible under article 3 of the Optional Protocol.¹⁹

7.8 However, the Committee considers that the author has sufficiently substantiated his other allegations for the purposes of admissibility and therefore proceeds with its consideration of the merits of the claims made under articles 6, 7, 9, 10, 16 and 23 (1) of the Covenant, read alone and in conjunction with article 2 (3), in respect of Tewfik Djaou, and article 7, read alone and in conjunction with article 2 (3), and article 23 (1), in respect of the author.

Consideration of the merits

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

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 jurisprudence²⁰ 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.²¹ Ordinance No. 06-01, 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.²²

8.3 The Committee notes that the State party has not responded to the author's claims concerning the merits of the case and recalls 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.²³ In conformity with article 4 (2) of the Optional Protocol, the State party has a duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with whatever information is available to it.²⁴ In the absence of any explanations from the State party in this respect, due weight must be given to the author's allegations, provided that they have been sufficiently substantiated.

8.4 The Committee recalls that, while the 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,

¹⁸ See, e.g., *Ch. H. O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.4; *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; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4.

¹⁹ *Souaiene and Souaiene v. Algeria*, para. 7.5.

²⁰ See, inter alia, *Boudjemai v. Algeria*, para. 8.2; *Mezine v. Algeria*, para. 8.2; and *Berzig v. Algeria*, para. 8.2.

²¹ 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.

²² *Dafar v. Algeria*, para. 6.4; *Zaier v. Algeria* (CCPR/C/112/D/2026/2011), para. 7.2; and *Ammari v. Algeria*, para. 8.2.

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

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

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

8.5 The Committee notes that Tewfik Djaou was last seen in May 1998, by a fellow inmate, while he was being detained at the barracks in Bellevue. It notes that the State party has produced no evidence to establish what happened to Tewfik Djaou 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 the deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.²⁶ In the present case, the Committee notes that the State party has produced no evidence to indicate that it has fulfilled its obligation to protect the life of Tewfik Djaou. The Committee therefore finds that the State party has failed in its duty to protect the life of Tewfik Djaou, 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 that, in the present case, after having had news four months and then seven months after Tewfik Djaou's arrest, when persons arrested and detained at the Bellevue barracks in Constantine informed the author that Tewfik Djaou was detained at the same place, the author has never again received any information, official or otherwise, about his fate or place of detention, despite various attempts to visit locations where he might have been detained and despite several successive requests made to the authorities. The Committee therefore considers it possible that Tewfik Djaou, who disappeared on 29 October 1997, is still being held incommunicado by the Algerian authorities. In the absence of any explanation from the State party, the Committee considers that this disappearance constitutes a violation of article 7 of the Covenant in respect of Tewfik Djaou.²⁷

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

8.8 As to the alleged violation of article 9 of the Covenant, the Committee notes the author's allegations that Tewfik Djaou 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 considers that due weight must be given to the author's allegations.²⁹ The Committee therefore finds a violation of article 9 of the Covenant in respect of Tewfik Djaou.³⁰

8.9 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.³¹ In the present case, the Committee notes that the State party has not furnished any explanation concerning the fate or whereabouts of Tewfik Djaou,

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

²⁶ *Sharma v. Nepal* (CCPR/C/122/D/2265/2013), para. 10.6; *Louddi v. Algeria* (CCPR/C/112/D/2117/2011), para. 7.4; *Boudjemai v. Algeria*, para. 8.4; and *Mezine v. Algeria*, para. 8.4. See also the Committee's general comment No. 36 (2018), para. 58.

²⁷ *Cherguit v. Algeria*, para. 7.6; *Bendjael and Bendjael v. Algeria*, para. 8.6; *Braih v. Algeria* (CCPR/C/128/D/2924/2016), para. 6.5; *Berzig v. Algeria*, para. 8.5; and *El Alwani v. Libyan Arab Jamahiriya* (CCPR/C/90/D/1295/2004), para. 6.5.

²⁸ *Berkaoui v. Algeria*, para. 8.7; *Dafar v. Algeria*, para. 6.7; *Rsiwi v. Algeria*, para. 8.7; and *Ammari v. Algeria*, para. 8.6.

²⁹ *Chani v. Algeria* (CCPR/C/116/D/2297/2013), para. 7.5.

³⁰ See, inter alia, *Mezine v. Algeria*, para. 8.7; *Khirani et al. v. Algeria*, para. 7.7; and *Berzig v. Algeria*, para. 8.7.

³¹ *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.

despite the steps taken by his relatives and the fact that, when he was last seen, Tewfik Djaou was in the hands of the authorities. The Committee finds that Tewfik Djaou's enforced disappearance 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.

8.10 The Committee also takes note of the anguish and distress caused to the author and his family by the disappearance, 25 years ago, of Tewfik Djaou. It therefore considers that the facts before it reveal a violation of article 7 of the Covenant with regard to the author.³²

8.11 In view of the above, the Committee will not consider separately the claims based on the violation of article 23 (1) of the Covenant.³³

8.12 The author also invokes article 2 (3) of the Covenant, read in conjunction with articles 6, 7, 9 and 16, which requires States parties to ensure that 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.³⁴ It recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it states that failure by a State party to investigate alleged violations could in and of itself give rise to a separate breach of the Covenant.

8.13 In the present case, the author and Tewfik Djaou's wife have repeatedly alerted the competent authorities to the disappearance of Tewfik Djaou, but the State party has failed to conduct an investigation into this disappearance and has not informed the author of Tewfik Djaou's fate. Furthermore, the fact that it has been legally impossible to initiate judicial proceedings since the promulgation of Ordinance No. 06-01 continues to deprive Tewfik Djaou and the author 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.³⁵ 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 Tewfik Djaou and of article 2 (3), read in conjunction with article 7 of the Covenant, with regard to the author.³⁶

9. 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 and 16 of the Covenant, read alone and in conjunction with article 2 (3), with regard to Tewfik Djaou. It also finds a violation by the State party of article 7 of the Covenant, read alone and in conjunction with article 2 (3), in respect of the author.

10. 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 obliged: (a) to conduct a prompt, effective, thorough, independent, impartial and transparent investigation into the disappearance of Tewfik Djaou and provide the author with detailed information about the results of its investigation; (b) to release Tewfik Djaou immediately if he is still being held incommunicado; (c) in the event that Tewfik Djaou is deceased, to hand over his remains to his family in a dignified manner, in accordance with the cultural norms and customs of the victims; (d) to prosecute, try and punish those responsible for the violations in a way that is commensurate with the gravity of the violations; and (e) to provide the author and Tewfik Djaou, if he is alive, or his beneficiaries with adequate compensation. In addition, the State party is under an obligation to take steps to prevent similar violations in the future. It is also under an obligation to ensure that it does not impede enjoyment of the

³² *Mezine v. Algeria*, para. 8.6; *Khirani et al 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.

³³ *Rsiwi v. Algeria*, para. 8.11; *Boudjemai v. Algeria* (CCPR/C/121/D/2283/2013), para. 8.12; and *Bouzeriba v. Algeria* (CCPR/C/111/D/1931/2010), para. 8.10.

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

³⁵ CCPR/C/DZA/CO/3, para. 7.

³⁶ *Drif and Rafrat v. Algeria*, para. 8.12.

right to an effective remedy for such serious violations as torture, extrajudicial execution and enforced disappearance. 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 Ordinance No. 06-01 that are incompatible with the Covenant to ensure that the rights enshrined in the Covenant can be enjoyed fully in the State party.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established. In this respect, 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.
