



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. 2843/2016**, ***

<i>Communication submitted by:</i>	Fatima Rsiwi (represented by counsel from Fondation Alkarama)
<i>Alleged victims:</i>	The author and Sadek Rsiwi (the husband of the author)
<i>State party:</i>	Algeria
<i>Date of communication:</i>	7 September 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 8 November 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	19 October 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 (2) and (3), 6 (1), 7, 9, 10 (1), 16, 19 and 23 (1)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2)

1. The author of the communication is Fatima Rsiwi, a national of Algeria. She claims that her husband, Sadek Rsiwi, born in 1942 and also a national of Algeria, is the victim of an enforced disappearance attributable to the State party, in violation of articles 2 (3), 6, 7, 9, 10, 16 and 23 (1) of the Covenant. The author maintains that she herself is the victim of a violation of her rights under articles 2 (3), 7 and 23 (1) of the Covenant. Lastly, she claims that, because of its domestic legislation, the State party is in breach of its general obligation under article 2 (2), read in conjunction with articles 2 (3) and 19 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 counsel from Fondation Alkarama.

* Reissued for technical reasons (11 March 2021).

** Adopted by the Committee at its 130th session (12 October–6 November 2020).

*** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, Bamariam Koita, David H. Moore, Duncan Laki Muhumuza, 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 Sadek Rsiwi, the father of eight children, lived in Ghardaïa and was “a former military officer” in the National Liberation Army, formed in 1954 to fight for the independence of Algeria. Because of his skills and his excellent knowledge of the region, where he served for many years, the Algerian authorities asked him to lead a local militia to support the activities of the security services, an offer which he declined on several occasions.

2.2 On a day in early March 1996, at around 11.30 a.m., Sadek Rsiwi was at his home when soldiers from Ghardaïa district arrived in several official vehicles.¹ They surrounded and searched his home, then arrested him and took him to Ghardaïa military district.²

2.3 On 17 and 18 March 1996, the author was able to visit her husband twice and to bring him medicine to treat his diabetes. Upon her subsequent visit, the author was informed that her husband had been transferred to Ouargla. When she arrived there, she was informed that there was no record of Sadek Rsiwi’s presence. She returned several times to Ghardaïa military district to inquire about her husband’s fate. Each time, she was told that he was no longer there and was ordered not to return. The author has not had any news of her husband since.

2.4 The author has made numerous requests to national judicial and administrative institutions for information on Sadek Rsiwi’s situation, including by sending letters to various administrative and government entities.³ All of these requests have proved futile. On 9 June 1996, the author sent a letter to the commander of Ouargla military district asking him to provide her with information regarding the fate of her husband but received no response. A similar request was sent to the commander of Ghardaïa military district on 1 October 1996, but it too remained unanswered.

2.5 On 13 October 1997, 21 June 1998, 20 September 1998 and 24 July 2000, the author sent letters to the public prosecutor at the Court of Ghardaïa to no avail. On 8 October 1996, 11 May 1998 and 24 July 2000, the author contacted the chair of the National Human Rights Observatory. She requested his assistance in clarifying the circumstances of her husband’s disappearance.

2.6 On 12 April and 20 June 1998, the author sent letters to the Ombudsman of the Republic⁴ to request that he intervene with the competent institutions. Subsequently, on 23 October 1999, she sent a letter to the Ministers of Defence and Justice, in which she explained that none of the authorities that she had contacted had replied to her and requested that an investigation be opened into her husband’s disappearance. On 5 November 2001, the author sent two letters, one to the President of the Republic and the other to the Minister of the Interior and Local Government, requesting their assistance. On 16 March 2002, the National Advisory Commission for the Promotion and Protection of Human Rights⁵ informed the author that, according to investigations carried out by the Ghardaïa gendarmerie, Sadek Rsiwi had not been arrested by the security services. The author then contacted the chair of the Commission on 30 April 2002 to ask him to pursue the investigations.

2.7 Despite the author’s efforts, no inquiry has been opened. The author stresses that she is no longer legally entitled to initiate judicial proceedings following the promulgation of Ordinance No. 06-01 of 27 February 2006 on the implementation of the Charter for Peace and National Reconciliation. Domestic remedies, which had already proved useless and

¹ The author identifies in particular A.W., an officer of Ghardaïa military district.

² The author specifies that her husband was arrested despite the fact that the soldiers who raided his home had found nothing.

³ These letters are annexed to the communication.

⁴ The author specifies that the role of the Ombudsman is to contribute to the protection of civil rights and freedoms and to the smooth functioning of public institutions and administrations. This appeal body, consisting of 44 representatives, was set up in 1996 and may be approached by any person who considers himself or herself to have been wronged by the malfunctioning of a public service.

⁵ The author explains that this institution, which has replaced the National Observatory for Human Rights, is an administrative authority that does not have any judicial functions or similar powers. It only has the power to make recommendations, which are without enforceable effect, since the decision to act on them remains at the discretion of the President of the Republic.

ineffective, are thus now totally 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”.

2.8 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 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 shall be doubled for repeat offences.”

2.9 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 establish the fate of victims.⁶ The Algerian authorities, including the judicial authorities, are manifestly refusing to establish the responsibility of the security services, officers of which are allegedly responsible for the enforced disappearance of Sadek Rsiwi. This refusal impedes the effectiveness of the remedies sought by his family.

The complaint

3.1 The author claims that her husband 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 Statute of the International Criminal Court and article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance. The author argues that, although no provision of the Covenant expressly mentions enforced disappearance, the practice involves violations of the right to life, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment and the right to liberty and security of person. In the present case, the author is claiming that the State party has violated articles 6 (1), 7, 9 (1–4), 10 (1), 16 and 23 (1), as well as article 2 (2), read in conjunction with articles 2 (3) and 19 of the Covenant.

3.2 The author recalls the paramount nature of the right to life and the obligation of the State party not only to refrain from arbitrarily depriving an individual of the right to life, but also 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. She further points out the obligation of the State party to protect the lives of persons in detention and to investigate any cases of disappearance, as the absence of an inquiry may in itself constitute a breach of article 6, including in cases where the disappearance is not the result of actions by agents of the State. The author argues that her husband was arrested in March 1996 and taken by agents of the security forces to the Ghardaïa military centre. His disappearance followed his refusal to join the Algerian militias operating under State control. Sadek Rsiwi’s

⁶ CCPR/C/DZA/CO/3, paras. 7–8.

family and friends have not heard from him in over 20 years. Their chances of finding him alive are slim. His death may have occurred in detention, as a result of torture or extrajudicial execution. Sadek Rsiwi's 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.

3.3 The author recalls the absolute and non-derogable nature of the right not to be subjected to acts of torture or cruel, inhuman or degrading treatment or punishment. Incommunicado detention systematically creates an environment conducive to torture, insofar as the person is outside 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 points to the State party's obligation to conduct an investigation as soon as an allegation of incommunicado detention is made or brought to its attention. The Committee has previously emphasized that amnesty laws are generally incompatible with the duty of States to investigate and to punish any person responsible for incommunicado detention.⁷ The author claims that, in the absence of registration or any other procedure made known to the family, the detention of Sadek Rsiwi has been incommunicado for over 20 years. During this period, which began on 18 March 1996, his family have been unable to communicate with him. The impossibility of communicating with the outside world, an inherent characteristic of incommunicado detention, results in immense psychological suffering for the detainee serious enough to fall within the scope of article 7 of the Covenant. The author thus argues that Sadek Rsiwi is the victim of a violation of article 7. With regard to Sadek Rsiwi's family, the anguish, distress and uncertainty caused by the disappearance, the authorities' denials and the absence of an inquiry over a period of more than 20 years constitute inhuman treatment and, consequently, a violation of article 7, read alone and in conjunction with article 2 (3) of the Covenant.

3.4 The author also points out that the right to liberty and security of person, as recognized under article 9 of the Covenant, prohibits arbitrary arrest and detention and imposes on the State party a number of procedural guarantees. She alleges that her husband is the victim of violations by the State party of article 9 of the Covenant, specifically: (a) paragraph 1, as he was the victim of an arbitrary deprivation of liberty by the military police; (b) paragraph 2, as the agents who arrested him did so without communicating the reasons for the arrest or presenting a warrant and he did not receive official notification following his arrest; (c) paragraph 3, as he was not brought before a competent judge after his arrest, nor tried or released, and 20 years have passed since his arrest, far exceeding the maximum period of 12 days of pretrial detention prescribed in the Code of Criminal Procedure for terrorism-related offences; and (d) paragraph 4, as he was removed from the protection of the law and was thus unable to challenge the legality of his detention.

3.5 The author also points to the fundamental and universal principle according to which all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person set out in article 10 (1) of the Covenant. Sadek Rsiwi has been deprived of all contact with the outside world since his transfer from Ghardaïa to an unknown place of detention. 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. Insofar as Sadek Rsiwi was subjected to cruel, inhuman or degrading treatment in violation of article 7 of the Covenant, he was, by extension, the victim of a violation of article 10 (1), as the cruel, inhuman or degrading treatment was by 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 this connection, she refers to the Committee's concluding observations on the second periodic report of Algeria under article 40 of the Covenant,⁸ in which the Committee established that disappeared individuals 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. Consequently, the incommunicado detention

⁷ Human Rights Committee, general comment No. 20 (1992), para. 15.

⁸ CCPR/C/79/Add.95, para. 10.

of Sadek Rsiwi constitutes a violation of article 16 of the Covenant attributable to the State party.

3.7 Recalling that article 23 (1) of the Covenant provides for the right to protection of the family, the author argues that the disappearance of Sadek Rsiwi deprived their family of a father and a husband and thus constitutes a violation of that article.

3.8 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. Sadek Rsiwi, 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 conduct inquiries into alleged violations of human rights and to prosecute and punish the perpetrators, and considers that the lack of response on the part of the Algerian authorities to her requests, as the victim's wife, 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 article 2 (3), read alone and in conjunction with articles 6, 7, 9, 10 and 16 of the Covenant.

3.9 Lastly, Ordinance No. 06-01 constitutes a non-fulfilment of the general obligation enshrined in article 2 (2) of the Covenant, read in conjunction with articles 2 (3) and 19. In adopting the Ordinance, in particular article 45, 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, furthermore, in article 46 of the Ordinance, has criminalized all peaceful expression of complaints and all public discussion of the alleged events, in violation of the author's right to freedom of expression, as enshrined in article 19 of the Covenant. The author considers that it is also because of the existence of the Ordinance – specifically the above-mentioned articles, whose incompatibility with the Covenant has been underlined by the Committee on numerous occasions – that the Committee's findings in all decisions regarding cases of enforced disappearance falling within the scope of the Ordinance have not been implemented by the State party.

3.10 The author requests that the Committee find, firstly, a violation of articles 2 (3), 6 (1), 7, 9 (1–4), 10 (1), 16 and 23 (1) of the Covenant, in respect of Sadek Rsiwi; secondly, she requests that the Committee find a violation of articles 2 (3), 7 and 23 (1) of the Covenant, in respect of herself; and, thirdly, she requests that it find that Ordinance No. 06-01, in particular articles 45 and 46, constitutes a violation of the general obligation under article 2 (2), read in conjunction with articles 2 (3) and 19 of the Covenant. The author also asks that the Committee request the State party: (a) to release Sadek Rsiwi if he is still alive; (b) to provide her with an effective remedy in the form of a comprehensive and thorough investigation into the enforced disappearance of her husband and to inform her of the results of the investigation; (c) to prosecute, try and punish the persons responsible for the disappearance of Sadek Rsiwi, in conformity with the State party's international commitments; and (d) to provide adequate compensation to the author and the dependants of Sadek Rsiwi for the violations suffered. Lastly, she asks the Committee to urge the Algerian authorities to repeal the above-mentioned articles of Ordinance No. 06-01.

State party's observations

4.1 On 3 April 2017, the State party invited the Committee to refer to the background memorandum of the Government of Algeria on handling the issue of disappearances in the light of the implementation of the Charter for Peace and National Reconciliation by way of comment on the merits of the allegations.

4.2 The State party is of the view that these communications, which implicate agents of the State or other persons acting on behalf of public authorities in cases of enforced disappearance during the period from 1993 to 1998, should be examined using a comprehensive approach. The State party considers that such communications should be placed in the broader context of the sociopolitical situation and security conditions that prevailed in the country during a period when the Government was struggling to combat a form of terrorism aimed at provoking the collapse of the Republican State. It was in this context, and in conformity with articles 87 and 91 of the Constitution, that the Government

implemented precautionary measures and informed the United Nations Secretariat of its declaration of a state of emergency, in accordance with article 4 (3) of the Covenant.

4.3 The State party provides explanations of the context surrounding the period from 1993 to 1998, during which the events occurred. These explanations are repeated systematically by the State party in all communications concerning cases of enforced disappearance.⁹

Author's comments on the State party's observations

5.1 On 11 October 2018, the author submitted comments on the State party's observations. She emphasizes that the observations are inappropriate, since they refer to a standard document dated July 2009 and 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 provide no response with regard to the particular circumstances of Sadek Rsiwi'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 which 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. The author recalls that, in its concluding observations on the fourth periodic report of Algeria, the Committee recommended that the State party cooperate with the Committee 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.¹⁰ The Committee also expressed its concern about the State party's practice of systematically referring to the "aide-memoire", which does not offer a substantive response to the claims made by authors concerning events related to the period from 1993 to 1998 and, in some instances, outside that period.¹¹

5.3 According to the Committee's established jurisprudence, the State party may not invoke the provisions of the Charter for Peace and National Reconciliation against persons who invoke provisions of the Covenant or who have submitted or may submit communications to the Committee.¹² The author considers that neither the State party's adoption of the Charter nor its adoption of a "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 In its concluding observations on the fourth periodic report of Algeria, the Committee reiterated its deep concern – already expressed several times in the past, in particular in its Views – with regard to article 45 of Ordinance No. 06-01, as that article precluded any kind of effective remedy for victims of violations of the Covenant's provisions committed by law enforcement personnel, including the armed forces and security services, and fostered impunity. Thus, the Committee once again voiced its concern at the numerous and serious violations that had been reported but had not yet been prosecuted or punished.¹³

5.5 The author considers that the State party's challenge to the Committee's competence on the grounds that it would be necessary to consider the cases of enforced disappearance dating from 1993 to 1998 through a comprehensive, non-individualized approach is devoid of any relevance, as the State party has ratified the Covenant and its Optional Protocol and has thus recognized the competence of the Committee to receive communications by individual victims of violations of the rights set forth in the Covenant. She further stresses that the declaration of the state of emergency, as provided for under article 4 of the Covenant, has no effect on the prohibition of enforced disappearance or on the exercise of the rights stemming from the Optional Protocol. She adds that it is implicit in article 4 (2) of the

⁹ See, inter alia, *El Boathi v. Algeria* (CCPR/C/119/D/2259/2013), para. 4.3 ff.; and *Boudjema v. Algeria* (CCPR/C/121/D/2283/2013), para. 5.3 ff.

¹⁰ CCPR/C/DZA/CO/4, para. 8.

¹¹ *Ibid.*, para. 7.

¹² *Fedsi v. Algeria* (CCPR/C/111/D/1964/2010), para. 7.2.

¹³ CCPR/C/DZA/CO/4, para. 11.

Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against all agents of the State and to transmit to the Committee the information in its possession.¹⁴

5.6 Lastly, the author considers that the State party has breached its general obligation under article 2 (2), read in conjunction with articles 2 (3) and 19 of the Covenant. 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, and, furthermore, has criminalized, under article 46, all peaceful expression of complaints and all public discussion of the alleged events, in violation of the author's right to freedom of expression enshrined in 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 claiming 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 them receiving a prison sentence of up to 5 years, in violation of article 19 of the Covenant.

Lack of cooperation by the State party

6. On 12 October and 13 December 2018, the State party was invited to submit its observations on the merits of the communication. The Committee notes that it has not received any response and regrets the refusal of the State party to provide any information in this regard. 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 transmit to the Committee the information in its possession.¹⁵

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the author's claim that she has exhausted all effective domestic remedies available to her. It notes that, to dispute the admissibility of the communication, the State party has simply referred to the background memorandum of the Government of Algeria on handling the issue of disappearances in the light of the implementation of the Charter for Peace and National Reconciliation. In this regard, the Committee recalls that, in 2018, it reiterated its concern that, despite repeated requests, the State party continued to refer systematically to a standard document (the "aide-memoire") without responding specifically to the claims made by authors of communications. Consequently, the Committee 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.¹⁶

7.4 Furthermore, 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.¹⁷ Although the family of Sadek Rsiwi brought his enforced disappearance to the attention of the competent authorities on many

¹⁴ *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.3.

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

¹⁶ CCPR/C/DZA/CO/4, paras. 7–8.

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

occasions, the State party has not conducted a comprehensive and thorough investigation into this serious allegation. Furthermore, the State party has not offered any specific explanation in its observations regarding the case of Sadek Rsiwi that would lead to the conclusion that an effective remedy is now available. In addition, Ordinance No. 06-01 continues to be applied despite the Committee's recommendation that it be brought into line with the Covenant.¹⁸ In its concluding observations on the State party's fourth periodic report, the Committee deplored 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.¹⁹ In the circumstances, the Committee considers that it is not precluded from considering the communication under article 5 (2) (b) of the Optional Protocol.

7.5 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 enshrined in article 19 of the Covenant. The Committee recalls its jurisprudence²⁰ 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. The Committee also recalls that a person may not claim to be a victim within the meaning of article 1 of the Optional Protocol unless his or her rights have actually been violated and no person may, in theoretical terms and by *actio popularis*, object to a law or practice that he or she holds to be at variance with the Covenant.²¹ In the present case, the Committee considers that the author has not provided sufficient information to explain how Ordinance No. 06-01 has been effectively applied to her from the standpoint of article 19 of the Covenant. Consequently, the Committee considers that these claims have not been sufficiently substantiated and are therefore inadmissible under article 2 of the Optional Protocol.

7.6 Furthermore, the Committee notes that, due to the changes made to the Algerian legal framework in 2006, the author has been unable to assert her right to an effective remedy to denounce the disappearance of her husband in 1996, as no remedy is available for this purpose. The Committee also notes that the present communication was submitted to it in 2016. It recalls that, according to rule 99 (c) of its rules of procedure, a communication may constitute an abuse of the right of submission when it is submitted five years after the exhaustion of domestic remedies by the author. The wording of this provision gives a degree of discretion to the Committee, which is competent to determine when the rule should not be strictly applied. The Committee has already examined cases of enforced disappearance imputed to the State party. For example, the case of Mahmoud Boudjema was brought before the Committee in 2013, although his disappearance had taken place in 1996.²² The Committee notes that, in the case of *Boudjema v. Algeria* – as in the present case – the State party did not claim that the communication constituted an abuse of the right of submission. Moreover, the Committee previously noted, in 2007 and 2018, that Ordinance No. 06-01 categorically prohibited the prosecution of members of the defence and security forces, and thus seemed to promote impunity.²³ The Committee considers that this climate of impunity, which is reinforced by the legal prohibition on initiating judicial proceedings, has an indisputably negative impact on the ability of victims to assert their right to an effective remedy at both the national and international level. Declaring the present communication inadmissible on the ground of abuse of the right of submission could have the effect of

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

¹⁹ CCPR/C/DZA/CO/4, para. 29.

²⁰ *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.4.

²¹ *Marchant Reyes et al. v. Chile* (CCPR/C/121/D/2627/2015), para. 6.4.

²² *Boudjema v. Algeria*.

²³ CCPR/C/DZA/CO/3, para. 7; and CCPR/C/DZA/CO/4, para. 11.

encouraging the State party to continue to impede the right to an effective remedy for victims of violations of the right to life. The Committee also recalls that enforced disappearance is a continuous offence and that, consequently, the obligation to investigate is itself continuous, which, in the present case, is negated by the law and its effects. The Committee does not, therefore, consider that, in the special circumstances of the case, the present communication would constitute an abuse of the right of submission.

7.7 The Committee considers that the author has sufficiently substantiated her claims for the purposes of admissibility and proceeds with its consideration of the merits of the claims made under articles 2 (3), 6 (1), 7, 9, 10 (1), 16 and 23 (1) of the Covenant.

Consideration of the merits

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

8.2 The Committee notes that the State party has merely referred to its collective and general comments, which it had previously transmitted to the Working Group on Enforced or Involuntary Disappearances and to 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 provisions of the Charter against persons who invoke provisions of the Covenant or who have submitted or may submit communications to the Committee. The Covenant demands that the State party concern itself with the fate of every individual and treat every individual with respect for the inherent dignity of the human person. As the amendments recommended by the Committee have not been introduced, Ordinance No. 06-01 contributes, in the present case, to impunity and therefore cannot, as it currently stands, be considered compatible with the provisions of the Covenant.²⁴

8.3 The Committee notes that the State party has not replied to the author's allegations concerning the merits of the case 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.²⁵ 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 transmit to the Committee the information in its possession.²⁶ In the absence of any explanation from the State party in this respect, due weight must be given to the author's allegations, provided that they have been sufficiently substantiated.

8.4 The Committee recalls that, while the Covenant does not explicitly use the term "enforced disappearance" in any of its articles, enforced disappearance constitutes a unique and integrated series of acts that represents 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.²⁷

8.5 The Committee notes that Sadek Rsiwi was last seen by the author on 18 March 1996, while he was in detention in Ghardaïa military district. It notes that the State party has produced no evidence to help determine Sadek Rsiwi's fate and has never even confirmed

²⁴ *Zaier v. Algeria* (CCPR/C/112/D/2026/2011), para. 7.2; and *Ammari v. Algeria* (CCPR/C/112/D/2098/2011), para. 8.2.

²⁵ 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; *Berzig v. Algeria* (CCPR/C/103/D/1781/2008), para. 8.3; and *Bolakhe et al. v. Nepal* (CCPR/C/123/D/2658/2015), para. 7.4.

²⁶ *Mezine v. Algeria*, para. 8.3; and *Medjnoune v. Algeria*, para. 8.3.

²⁷ International Convention for the Protection of All Persons from Enforced Disappearance, art. 2; *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*, para. 7.4. See also Human Rights Committee, general comment No. 36 (2019), para. 58.

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.²⁸ 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 Sadek Rsiwi. The Committee therefore finds that the State party has failed in its duty to protect the life of Sadek Rsiwi, 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), in which it recommends that States parties should make provision to ban incommunicado detention. It notes that, in the present case, since seeing her husband twice in Ghardaïa military district on 17 and 18 March 1996, the author has not received any information whatsoever on his fate or place of detention, despite her various attempts to visit him at his initial place of detention, from which he was allegedly transferred, and despite several successive requests to the State authorities. The Committee therefore considers that it is possible that Sadek Rsiwi, who disappeared on 18 March 1996, 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 Sadek Rsiwi.²⁹

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.³⁰

8.8 The Committee also takes note of the anguish and distress caused to the author and her family for over 24 years by the disappearance of Sadek Rsiwi. It considers that the facts before it disclose a violation, in respect of the author, of article 7, read alone and in conjunction with article 2 (3) of the Covenant.³¹

8.9 With regard to the alleged violation of article 9 of the Covenant, the Committee takes note of the author's allegations that Sadek Rsiwi was arbitrarily arrested, without a warrant, and was not formally 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.³² The Committee therefore finds a violation of article 9 of the Covenant in respect of Sadek Rsiwi.³³

8.10 The Committee is of the view that the intentional removal of a person from the protection of the law constitutes a refusal to recognize him or her as a person before the law, particularly if the efforts of his or her relatives to obtain access to potentially effective remedies have been systematically impeded.³⁴ In the present case, the Committee notes that the State party has not provided any convincing explanation concerning the fate or whereabouts of Sadek Rsiwi, despite the requests from his relatives and the fact that, when he was last seen, Sadek Rsiwi was in the hands of the authorities of the State party. The Committee finds that the enforced disappearance of Sadek Rsiwi over 24 years ago removed

²⁸ *Louddi v. Algeria* (CCPR/C/112/D/2117/2011), para. 7.4; *Mezine v. Algeria*, para. 8.4; *Boudjemai v. Algeria*, para. 8.4; and *Sharma v. Nepal* (CCPR/C/122/D/2265/2013), para. 10.6. See also Human Rights Committee, general comment No. 36, para. 58.

²⁹ *Ammari v. Algeria*, para. 8.5; *Mezine v. Algeria*, para. 8.5; *Khirani v. Algeria* (CCPR/C/104/D/1905/2009 and Corr.1), para. 7.5; *Berzig v. Algeria*, para. 8.5; and *El Alwani v. Libyan Arab Jamahiriya* (CCPR/C/90/D/1295/2004), para. 6.5.

³⁰ *Ammari v. Algeria*, para. 8.6.

³¹ *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; *El Hassy v. Libyan Arab Jamahiriya* (CCPR/C/91/D/1422/2005), para. 6.11; and *Sankara et al. v. Burkina Faso* (CCPR/C/86/D/1159/2003), para. 12.2.

³² *Chani v. Algeria* (CCPR/C/116/D/2297/2013), para. 7.5.

³³ See, inter alia, *Mezine v. Algeria*, para. 8.7; *Khirani v. Algeria*, para. 7.7; and *Berzig v. Algeria*, para. 8.7.

³⁴ *Basnet v. Nepal* (CCPR/C/117/D/2164/2012), para. 10.9; *Tharu et al. v. Nepal* (CCPR/C/114/D/2038/2011), para. 10.9; and *Serna et al. v. Colombia*, para. 9.5.

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.

8.11 In view of the above, the Committee will not consider separately the claims based on the violation of article 23 (1) of the Covenant.³⁵

8.12 The author also invokes article 2 (3) of the Covenant, 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.³⁶ It refers to its general comment No. 31 (2004), which 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.

8.13 In this case, although the author reported the disappearance of her husband to the competent authorities several times, the State party did not carry out a comprehensive and thorough investigation into the disappearance and the author received no information. Furthermore, the fact that it is legally impossible to initiate judicial proceedings since the promulgation of Ordinance No. 06-01 continues to deprive Sadek Rsiwi and the author of access to an effective remedy, given that the Ordinance prohibits using the justice system to shed light on the most serious crimes, 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 and 16 of the Covenant, in respect of Sadek Rsiwi, and of article 2 (3), read in conjunction with article 7 of the Covenant, in respect of the author.

9. The Committee, acting under article 5 (4) of the Optional Protocol to the Covenant, is of the view that the facts before it disclose a violation by the State party of articles 6, 7, 9 and 16 of the Covenant, and of article 2 (3), read in conjunction with articles 6, 7, 9 and 16 of the Covenant, in respect of Sadek Rsiwi. It also finds a violation of article 7, read alone and in conjunction with article 2 (3) of the Covenant, 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 to: (a) conduct a prompt investigation that is effective and thorough, impartial and independent, and transparent into the disappearance of Sadek Rsiwi and to provide the author with detailed information about the results of its investigation; (b) to release Sadek Rsiwi immediately if he is still being held incommunicado; (c) in the event that Sadek Rsiwi 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) prosecute, try and punish those responsible for the violations committed; and (e) provide adequate compensation to the author and to Sadek Rsiwi, if he is alive, and provide appropriate satisfaction. 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 by victims of crimes such as torture, extrajudicial killings and enforced disappearance. It is also under an obligation to take steps to prevent similar violations in the future. To that end, the Committee is of the view that the State party should review its legislation in mind of 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.

³⁵ *Boudjema v. Algeria*, para. 8.12; and *Bouzeriba v. Algeria* (CCPR/C/111/D/1931/2010), para. 8.10.

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

³⁷ CCPR/C/DZA/CO/3, para. 7.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective 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 Committee's Views and to have them widely disseminated in the official languages of the State party.
