



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. 2639/2015*, **

<i>Communication submitted by:</i>	Tassadit Berkaoui (represented by counsel from Fondation Alkarama)
<i>Alleged victims:</i>	The author and Achour Berkaoui (the author's brother)
<i>State party:</i>	Algeria
<i>Date of communication:</i>	4 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 5 July 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	19 October 2020
<i>Subject matter:</i>	Enforced disappearance
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to an effective remedy; cruel, inhuman or degrading treatment or punishment; liberty and security of person; human dignity; recognition as a person before the law; right to family life
<i>Articles of the Covenant:</i>	2 (3), 6 (1), 7, 9, 10 (1), 16 and 23 (1)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2)

1.1 The author of the communication is Tassadit Berkaoui, a national of Algeria. She claims that her brother, Achour Berkaoui, born on 10 July 1961 and also a national of Algeria, is the victim of an act of enforced disappearance attributable to the State party, in violation of articles 2 (3), 6 (1), 7, 9, 10, 16 and 23 (1) of the Covenant. The author further claims that she and her family are victims of a violation of articles 2 (3), 7 and 23 (1) 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.

* 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.



1.2 On 28 January 2016, the Committee, acting through the Special Rapporteur on new communications and interim measures, decided not to consider the admissibility and the merits of the communication separately.

The facts as submitted by the author

2.1 Achour Berkaoui, a father of one, was employed as a tax officer and was a member of the Communal People's Assembly (municipal council) of Algiers, having been elected from the list of the Islamic Salvation Front (Front Islamique du Salut).¹ On 20 November 1994, he was arrested at the bus station opposite the presidential palace of Algiers by a group of security forces officers, some wearing civilian clothes and others in uniform. The officers, some of whom were wearing balaclavas, had arrived in two police cars and one unmarked car. They handcuffed Achour Berkaoui, forced him into the trunk of one of the vehicles and drove him to an unknown location. The family of Achour Berkaoui have since had no news from him, despite all their efforts to find him.

2.2 Immediately after Achour Berkaoui's arrest, which was reported the same day by witnesses at the scene, the author went to the district police station to find out whether the victim was there. The duty officer replied that he knew nothing about the arrest. She also went to Mustapha Hospital, in central Algiers, to find out what had happened to her brother, fearing that he might have been summarily executed by the police, a practice that was particularly common at the time.

2.3 The author then went to the Court of Bir Mourad Ra'is, which covers the district of El Mouradia, to find out whether Achour Berkaoui had been brought before the prosecutor attached to the Court. The judge refused to see her, and the prosecutor's office referred her to the Court of Algiers, telling her that only the principal public prosecutor's office had jurisdiction. The author went back again several times and also complained to the principal public prosecutor's office of Algiers, where she went many times, over several months, in the hope of obtaining news about her brother, each time in vain.

2.4 One week after Achour Berkaoui's arrest, his family was informed by two persons recently released from the detention centre of Al Madina police station that, on the day of their release, Achour Berkaoui was still there. The two witnesses also reported that they had been severely tortured. Some weeks after his abduction, the family received confirmation from a source close to the police that Achour Berkaoui was at the detention centre of the Châteauneuf Police Training Centre in Ben Aknoun, one of the largest secret detention centres in the capital.

2.5 The day after Achour Berkaoui's abduction, his wife went to Al Madina police station to find out what had happened to him, but the officers claimed to have no information about him. At the insistence of his wife, who returned a week later to ask for news, the police officers of Al Madina eventually acknowledged that Achour Berkaoui had indeed been detained at the police station, but that he had been transferred to another department.

2.6 On 10 July 1996, the author lodged a complaint regarding the disappearance of Achour Berkaoui with the National Human Rights Observatory. On 15 March 1998, nearly two years later, the Observatory sent her a letter acknowledging receipt of her letter of 10 July 1996, adding that, "according to information received from the security services, the victim was taken by two unknown armed persons in official uniform who, after checking his identity, took him to an unknown location". The Observatory noted that an official report on the case, prepared by the El Mouradia brigade of the National Gendarmerie (Dark Al Watani) and dated 11 January 1997, had been forwarded to the Court of Algiers. Notably, the Observatory's reply did not mention any real investigation being opened by the authorities,

¹ The author explains that, between 1992 and 1998, between 8,000 and 20,000 persons, depending on the source, were arrested or abducted by the Algerian security services, all branches included, and by militias armed by the Government. Initially directed against activists of the Islamic Salvation Front, which had won an absolute majority in the first free and pluralist elections held in the country since its independence, the practice of enforced disappearance was later directed against all political opponents. Thousands were abducted, tortured and, in most cases, summarily executed by the police, the National Gendarmerie, the army or government militias.

even though the abduction had taken place in the very centre of the capital, opposite the Office of the President of the Republic. Moreover, Achour Berkaoui's family were never able to obtain a copy of the official report said to have been prepared by the brigade of the National Gendarmerie. The family therefore once again approached the Observatory, which, in a letter dated 5 June 1999, replied that its attempts to ascertain the fate of Achour Berkaoui had been fruitless, this time specifying that an investigation had reportedly been opened.

2.7 In a report dated 7 June 1997, the urban security police superintendent in El Mouradia informed the author that her brother had "never been brought before the courts" and that "he had no information about him", which left the family in complete uncertainty about his fate. In a report dated 15 July 1997, the urban security police official in Algiers Centre notified the author – at the request of the public prosecutor of Algiers – that the investigation allegedly opened into the disappearance of Achour Berkaoui had proved fruitless.

2.8 On 11 November 2003, a new complaint of arbitrary detention was submitted to the public prosecutor of Algiers. On 19 November 2003, the family sent a letter to the Head of the Government to inform him of all the efforts made to find Achour Berkaoui and the fact that their complaints had not been taken into account and requesting him to issue the necessary instructions to enable a solution to be found to put an end to the tragedy that the family were living through. On 3 January 2004, they received a reply from the Office of the Head of the Government, which stated merely that "the case file had been transferred to the National Advisory Commission for the Promotion and Protection of Human Rights, which is competent to handle such cases" and advised the family "to contact that body directly".

2.9 In addition to these efforts, Achour Berkaoui's mother contacted the Minister of Justice to inform him of the situation and request his intervention, but she never received a reply. On 14 February 2006, following the entry into force of the Charter for Peace and National Reconciliation, the family requested an official certificate of disappearance from the authorities so that they could initiate the judicial procedure established by law. On 30 April 2006, the Ministry of Defence acknowledged receipt of the request and noted that it had been registered. However, no follow-up action was taken.

2.10 Despite the author's best efforts, no serious investigation has been opened. The author emphasizes that it is now legally impossible for her to bring the case before the judicial authorities, 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 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 in order 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, on pain of criminal prosecution, 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 legal authority. Furthermore, article 46 of the Ordinance establishes that: "Anyone who, through his or her spoken or written statements or any other act, uses or makes use of the wounds caused by the national tragedy to undermine the institutions of the People's Democratic Republic of Algeria, weaken the State, impugn the honour of its agents who served it with dignity or tarnish the image of Algeria abroad shall be liable to a term of imprisonment of 3 to 5 years and a fine of 250,000 to 500,000 Algerian dinars. Criminal proceedings shall be automatically initiated by the public prosecutor's office. The penalty is doubled for repeat offences."

2.12 The author adds that the effect of this law is to grant amnesty for crimes committed in the prior 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.² The Algerian authorities, including the judicial authorities, clearly refuse to establish the responsibility of the security services whose members allegedly perpetrated the enforced disappearance of Achour Berkaoui. This refusal counters the effectiveness of the remedies sought by the family.

The complaint

3.1 The author claims that her brother is the victim of an act of enforced disappearance, as defined 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.³ Even though no provision of the Covenant specifically mentions enforced disappearance, the practice involves violations of the right to life, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment and the right to liberty and security of person. In the present case, the author claims violations by the State party of articles 6 (1), 7, 9 (1) to (4), 10 (1), 16 and 23 (1), read alone and in conjunction with article 2 (3), of the Covenant.

3.2 The author recalls the supreme nature of the right to life and the State party's obligation not only to refrain from arbitrarily depriving any individual of his or her right to life, but also to prevent and punish any act involving a violation of article 6 of the Covenant, including acts perpetrated by agents of the State. She also recalls the State party's obligation to protect the lives of persons in detention and to investigate any cases of disappearance, as the failure to investigate may in itself constitute a breach of article 6, including in cases where the disappearance was not attributable to agents of the State. The author claims that her brother was abducted by members of the security forces on 20 November 1994 and has been missing since that date. His disappearance was indisputably the result of a State-controlled operation that was part of a campaign of widespread repression and neutralization against all activists, elected members of communal assemblies and deputies of the Islamic Salvation Front. The Algerian authorities should have taken all measures necessary to ensure that Achour Berkaoui's arrest did not become an abduction, that his fundamental rights are respected and that he is not detained incommunicado, for the purpose of, inter alia, allowing his family to visit him regularly and of recognizing his right to have access to a lawyer to assist him and to challenge the lawfulness of his detention. By depriving Achour Berkaoui of all his rights and placing him outside the protection of the law, the Algerian authorities have violated their obligation to safeguard his right to life. These facts demonstrate a failure by the State party to fulfil its obligations and constitute a violation of article 6 (1) of the Covenant.

3.3 The author also recalls that the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment is an absolute right from which no derogation is permissible. Incommunicado detention automatically creates an environment that is conducive to the practice of torture, as the individual is removed from the protection of the law. According to the Committee's jurisprudence, such a practice may in itself constitute a violation of article 7 of the Covenant. The State party has an obligation to carry out an investigation as soon as an allegation of incommunicado detention is brought to its attention. The Committee has previously stressed that amnesty laws are generally incompatible with the duty of States to investigate and to punish any individual who is responsible for incommunicado detention.⁴ The author states that, in the absence of registration or any other procedure in relation to Achour Berkaoui's detention that could have been made known to the family, it constitutes incommunicado detention. Since he was arrested, without a warrant and without being informed of the reasons for his arrest, his family have not been able to contact him, and no useful information has been provided as to his fate or whereabouts. The

² CCPR/C/DZA/CO/3, paras. 7–8.

³ The author reiterates that enforced disappearance, when committed in a systematic manner or on a large scale, constitute a crime against humanity under article 7 of the Rome Statute of the International Criminal Court.

⁴ Human Rights Committee, general comment No. 20 (1992), para. 15.

State party has done nothing to ensure that Achour Berkaoui is not being detained incommunicado, and no investigation has been carried out. No explanation regarding Achour Berkaoui's fate has been provided by the State party since his arrest on 20 November 1994. The impossibility of communicating with the outside world, which is inherent in incommunicado detention, causes such detainees immense psychological suffering that is serious enough to fall within the scope of article 7 of the Covenant. The author therefore claims that Achour Berkaoui is the victim of a violation of article 7. With regard to the family of Achour Berkaoui, the anguish, distress and uncertainty caused by his disappearance, the authorities' denial and the fact that no investigation has been carried out for more than 25 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 further recalls that the right to liberty and security of person, as recognized under article 9 of the Covenant, prohibits arbitrary arrest and detention and requires the State party to provide a number of procedural safeguards. The author alleges that her brother is the victim of violations by the State party of article 9 of the Covenant, specifically: (a) paragraph 1, as Achour Berkaoui was unlawfully arrested and detained and was held in incommunicado detention; (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 25 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 Achour Berkaoui has been removed from the protection of the law and thus has never been able to challenge the lawfulness of his detention.

3.5 The author 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. Achour Berkaoui was deprived of all contact with the outside world. Incommunicado detention is likely to cause the detainee suffering that is serious enough to qualify as torture. Such detention is also conducive to inhuman treatment. Insofar as Achour Berkaoui was subjected to cruel, inhuman or degrading treatment in violation of article 7 of the Covenant, he was, a fortiori, the victim of a violation of article 10 (1), since cruel, inhuman or degrading treatment is, by its very nature, incompatible with respect for the inherent dignity of the human person.

3.6 The author also submits 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,⁵ 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. Accordingly, the incommunicado detention of Achour Berkaoui constitutes a violation by the State party of article 16 of the Covenant.

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

3.8 Under article 2 (3) of the Covenant, any person who alleges that any of his or her rights under the Covenant have been violated must have access to effective remedies. The author states that Achour Berkaoui, as a victim of enforced disappearance, is unable in practice to avail himself of any remedy. On the basis of the Committee's jurisprudence, the author recalls the State party's obligation to investigate alleged violations of human rights and to prosecute and punish those responsible, and expresses the view that the Algerian authorities' failure to respond to the requests made by the victim's family constitutes a failure by the State party to fulfil its obligations under article 2 of the Covenant. Ordinance No. 06-01, and specifically its article 45, constitutes a violation of the State party's obligation to ensure an effective remedy. Accordingly, the author requests the Committee to find a

⁵ CCPR/C/79/Add.95, para. 10.

violation of article 2 (3), read alone and in conjunction with articles 6, 7, 9, 10, 16 and 23 of the Covenant.

3.9 The author requests the Committee to find a violation of articles 6 (1), 7, 9 (1) to (4), 10 (1), 16 and 23 (1), read alone and in conjunction with article 2 (3) of the Covenant, in relation to Achour Berkaoui; and a violation of articles 7 and 23 (1), read alone and in conjunction with article 2 (3), of the Covenant, in relation to herself and her family. The author further asks the Committee to request the State party to: (a) release Achour Berkaoui if he is still alive; (b) provide the author with an effective remedy by conducting a thorough and prompt investigation into the enforced disappearance of her brother and informing her of the results of the investigation; (c) initiate criminal proceedings against those allegedly responsible for the disappearance of Achour Berkaoui, bring them to justice and punish those who are found guilty, in accordance with the State party's international commitments; and (d) adequately compensate the author and Achour Berkaoui's beneficiaries for the violations suffered.

State party's observations

4. On 3 November 2015, the State party invited the Committee to refer to the background memorandum of the Algerian Government on handling the issue of disappearances in the light of the implementation of the Charter for Peace and National Reconciliation, and requested that the admissibility of the communication be considered separately from the merits and that the communication be declared inadmissible. After the Committee refused to grant this request for separate consideration, the State party, on 3 April 2017, once again invited the Committee to refer to the said background memorandum and, consequently, not to consider the merits of the case.

Author's comments on the State party's observations

5.1 On 20 January 2016, the author submitted her comments on the State party's observations on admissibility. She emphasizes that these observations are inappropriate, as they are addressed to another body for the promotion and protection of human rights – the Working Group on Enforced or Involuntary Disappearances – and are obsolete, as they date from July 2009. Moreover, they do not deal at all with the admissibility of the communication, the particulars of the case or the remedies sought by the victim's family, and therefore demonstrate the Algerian authorities' disregard and disdain for this procedure.

5.2 Recalling that none of the remedies sought have led to a thorough investigation or criminal proceedings and that the Algerian authorities have failed to provide tangible evidence of any real efforts to locate Achour Berkaoui and identify those responsible for his disappearance, the author concludes that domestic remedies have been exhausted and that the Committee should find the communication admissible.

5.3 Referring to the Committee's jurisprudence whereby the Charter for Peace and National Reconciliation cannot be used against persons who submit individual communications, the author recalls that the provisions of the Charter are by no means a satisfactory response to the problem of disappearances.

Lack of cooperation by the State party

6. On 5 July 2015, 28 January 2016, 3 February 2017 and 11 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 accordance with article 4 (2) of the Optional Protocol, the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to transmit to the Committee the information in its possession.⁶

⁶ *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.

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 available remedies in respect of her brother's disappearance. It notes that, in order to dispute the admissibility of the communication, the State party has simply referred to the background memorandum of the Algerian Government 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.⁷

7.4 The Committee recalls that the State party has a duty not only to carry out thorough investigations of alleged violations of human rights brought to the attention of its authorities, in particular alleged violations of the right to life, but also to prosecute, try and punish anyone held to be responsible for such violations.⁸ Achour Berkaoui's family has repeatedly alerted the competent authorities of the State party to his enforced disappearance. However, the authorities have not carried out an effective and thorough investigation in this regard. Moreover, the State party has provided no evidence giving grounds to conclude that an effective remedy is currently available. In addition, Ordinance No. 06-01 continues to be applied, despite the Committee's insistence that it be brought into line with the principles of the Covenant.⁹ In this respect, the Committee recalls that in its concluding observations regarding the State party's fourth periodic report, it deplored in particular the fact that there is no effective remedy available for disappeared persons or their families and that no action has been taken to uncover the truth about disappeared persons, to find them and, if they are deceased, to return their remains to their families.¹⁰ In the circumstances, the Committee finds that it is not precluded from considering the allegations in respect of Achour Berkaoui under article 5 (2) (b) of the Optional Protocol.

7.5 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 brother in 1994, as no remedy is available for this purpose. The Committee also notes that the present communication was submitted to it in 2015. The Committee 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 imputable 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 1996.¹¹ 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 in 2018, that Ordinance No. 06-01

⁷ CCPR/C/DZA/CO/4, paras. 7–8.

⁸ *Boudjemai v. Algeria* (CCPR/C/107/D/1791/2008), para. 7.4.

⁹ CCPR/C/DZA/CO/3, paras. 7, 8 and 13; and CCPR/C/DZA/CO/4, paras. 6, 8, 12, 14 and 34.

¹⁰ CCPR/C/DZA/CO/4, para. 29.

¹¹ *Boudjema v. Algeria* (CCPR/C/121/D/2283/2013).

categorically prohibited the prosecution of members of the defence and security forces, and thus seemed to promote impunity.¹² The Committee considers that this climate of impunity, which is reinforced by the legal prohibition on bringing cases before the judicial authorities, has an indisputably negative impact on the ability of victims to assert their right to an effective remedy at both the national and international levels. Declaring the present communication inadmissible on the ground of abuse of the right of submission could have the effect of 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 therefore does not consider that, in the special circumstances of the case, the present communication would constitute an abuse of the right of submission.

7.6 The Committee finds that the author has sufficiently substantiated her allegations for purposes of admissibility, and thus proceeds to examine the merits of her claims 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 use the provisions of the Charter against persons who invoke provisions of the Covenant or who have submitted, or may submit, communications to the Committee. The Covenant requires the State party to show concern for the fate of every person and to treat everyone in a manner that respects 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.¹³

8.3 The Committee further notes that the State party has not responded to the author's allegations regarding the merits of the case and recalls its jurisprudence according to which the burden of proof cannot 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.¹⁴ In accordance with article 4 (2) of the Optional Protocol, the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to transmit to the Committee the information in its possession.¹⁵ 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 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,

¹² CCPR/C/DZA/CO/3, para. 7; and CCPR/C/DZA/CO/4, para. 11.

¹³ *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.

¹⁴ 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.

¹⁵ *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.¹⁶

8.5 The Committee notes that Achour Berkaoui was last seen by witnesses some weeks after his arrest on 20 November 1994, when he was in detention at Al Madina police station and later at the detention centre of the Châteauneuf Police Training Centre in Ben Aknoun. It further notes that the State party has not provided any information that could shed light on the fate of Achour Berkaoui and has never even confirmed his detention. The Committee recalls that, in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.¹⁷ 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 Achour Berkaoui. Accordingly, it concludes that the State party has failed in its obligation to protect the life of Achour Berkaoui, in violation of article 6 (1) of the Covenant.

8.6 The Committee also recognizes the degree of suffering involved in indefinite detention without contact with the outside world. It recalls its general comment No. 20 (1992), in which it recommends that States parties should make provision to ban incommunicado detention. It notes in the present case that Achour Berkaoui's family were never given access to any information whatsoever about his fate or place of detention, despite their repeated requests for information from the competent authorities of the State party. The Committee therefore considers that it is possible that Achour Berkaoui, who disappeared on 20 November 1994, is still being held incommunicado by the Algerian authorities. In the absence of any explanation from the State party, the Committee considers that the disappearance of Achour Berkaoui constitutes a violation of article 7 of the Covenant with respect to him.¹⁸

8.7 In view of the foregoing, the Committee will not consider separately the claims relating to the violation of article 10 of the Covenant.¹⁹

8.8 The Committee also takes note of the anguish and distress caused to the author and her family by the disappearance of Achour Berkaoui for more than 25 years. In this regard, it considers that the facts before it disclose a violation with regard to them of article 7, read alone and in conjunction with article 2 (3), of the Covenant.²⁰

8.9 As for the author's claims concerning a violation of article 9 of the Covenant, the Committee notes the author's allegations that Achour Berkaoui was arrested arbitrarily, without a warrant, and was not charged or brought before a judicial authority, which would have enabled him to challenge the lawfulness of his detention. In the absence of any information from the State party in this regard, the Committee is of the opinion that due weight should be given to the author's allegations.²¹ The Committee therefore finds a violation of article 9 of the Covenant in respect of Achour Berkaoui.²²

¹⁶ 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* (CCPR/C/119/D/2259/2013), para. 7.4. See also Human Rights Committee, general comment No. 36 (2019), para. 58.

¹⁷ *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.

¹⁸ *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.

¹⁹ *Ammari v. Algeria*, para. 8.6.

²⁰ *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.

²¹ *Chani v. Algeria* (CCPR/C/116/D/2297/2013), para. 7.5.

²² See, inter alia, *Mezine v. Algeria*, para. 8.7; *Khirani v. Algeria*, para. 7.7; and *Berzig v. Algeria*, para. 8.7.

8.10 The Committee also recalls that the intentional removal of a person from the protection of the law constitutes a denial of that person's right to recognition as a person before the law, in particular if the efforts of his or her relatives to exercise their right to an effective remedy have been systematically impeded.²³ In the present case, the Committee notes that the State party has not provided any explanation concerning the fate or whereabouts of Achour Berkaoui, despite the requests made by his relatives and the fact that he was in the hands of the State party's authorities the last time he was seen. The Committee concludes that the enforced disappearance of Achour Berkaoui for more than 25 years has removed him from the protection of the law and deprived him of his right to recognition as a person before the law, in violation of article 16 of the Covenant.

8.11 In view of the foregoing, the Committee will not consider separately the claims relating to the violation of article 23 (1) of the Covenant.²⁴

8.12 The author also invokes article 2 (3) of the Covenant, which requires States parties to ensure that all individuals have accessible, effective and enforceable remedies for asserting the rights recognized in the Covenant. The Committee recalls the importance it attaches to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of violations of the rights guaranteed under the Covenant.²⁵ It recalls 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 the present case, the author has repeatedly alerted the competent authorities to her brother's disappearance, but the State party has not carried out an in-depth and thorough investigation into his disappearance, and the author has been told neither about the progress made with respect to search and investigation procedures nor about what happened to Achour Berkaoui. Furthermore, the legal impossibility of applying to a judicial body since the promulgation of Ordinance No. 06-01 continues to deprive Achour Berkaoui and the author of any access to an effective remedy, given that the Ordinance prohibits using the justice system to shed light on the most serious crimes, such as enforced disappearance.²⁶ The Committee concludes that the facts before it disclose a violation of article 2 (3), read in conjunction with articles 6, 7, 9 and 16 of the Covenant, in respect of Achour Berkaoui, 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, 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 and of article 2 (3), read in conjunction with articles 6, 7, 9 and 16, of the Covenant in respect of Achour Berkaoui. It also finds a violation by the State party of article 7, read alone and in conjunction with article 2 (3) of the Covenant, in respect of the author.

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 rights under the Covenant 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 Achour Berkaoui and to provide the author with detailed information about the results of the investigation; (b) release Achour Berkaoui immediately if he is still being held incommunicado; (c) in the event that Achour Berkaoui is deceased, return his remains to his family in a dignified manner, in accordance with the cultural norms and traditions of the victims; (d) prosecute, try and punish those responsible for the violations committed; and (e) provide adequate compensation to the author and to Achour Berkaoui, 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

²³ *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.

²⁴ *Boudjema v. Algeria*, para. 8.12; and *Bouzeriba v. Algeria* (CCPR/C/111/D/1931/2010), para. 8.10.

²⁵ *Allioua and Kerouane v. Algeria* (CCPR/C/112/D/2132/2012), para. 7.11.

²⁶ CCPR/C/DZA/CO/3, para. 7.

Covenant and, in particular, repeal the provisions of the aforementioned Ordinance that are incompatible with the Covenant, to ensure that the rights enshrined in the Covenant can be enjoyed fully in the State party.

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