



International Covenant on Civil and Political Rights

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Communication No. 1806/2008

Views adopted by the Committee at its 107th session (11-28 March 2013)

<i>Submitted by:</i>	Mustapha Saadoun, his wife, Malika Gaid Youcef (<i>both deceased</i>), and their daughter, Nouria Saadoun (represented by the Collectif des familles des disparu(e)s en Algérie (Collective of Families of the Disappeared in Algeria))
<i>Alleged victims:</i>	Djamel Saadoun (the authors' son and brother) and the authors themselves
<i>State party:</i>	Algeria
<i>Date of communication:</i>	30 June 2008 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 26 August 2008 (not issued in document form)
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<i>Subject matter:</i>	Enforced disappearance
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Prohibition of torture and cruel or inhuman treatment, right to liberty and security of person, recognition as a person before the law and right to an effective remedy
<i>Articles of the Covenant:</i>	2, para. 3; 7; 9, paras. 1–4; and 16
<i>Article of the Optional Protocol:</i>	5, para. 2 (b)

* Reissued for technical reasons on 18 July 2013.

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (107th session)

concerning

Communication No. 1806/2008**

Submitted by: Mustapha Saadoun, his wife, Malika Gaid Youcef (*both deceased*), and their daughter Nouria Saadoun (represented by the Collectif des familles des disparu(e)s en Algérie (Collective of Families of the Disappeared in Algeria))

Alleged victims: Djamel Saadoun (the authors' son and brother) and the authors themselves

State party: Algeria

Date of communication: 30 June 2008 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 22 March 2013,

Having concluded its consideration of communication No. 1806/2008, submitted to the Human Rights Committee by Mustapha Saadoun, his wife, Malika Gaid Youcef, and their daughter, Nouria Saadoun, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the communication, dated 30 June 2008, are Mustapha Saadoun and his wife, Malika Gaid Youcef, Algerian nationals born on 26 August 1918 and 20

** The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Kheshoe Parsad Matadeen, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval. Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Lazhari Bouzid did not participate in the consideration of the communication. The text of an individual opinion by Committee member, Mr. Victor Manuel Rodríguez-Rescia, is appended to the present Views

December 1927, respectively. They claim that their son, Djamel Saadoun, an Algerian national born on 26 February 1967, is the victim of violations by Algeria of article 2, paragraph 3, articles 7, 9 and 16 of the International Covenant on Civil and Political Rights. They further claim that they themselves are victims of violations of articles 2, paragraph 3, and 7 of the Covenant. The authors are represented by the Collectif des familles des disparu(e)s en Algérie (Collective of Families of the Disappeared in Algeria).

1.2 On 12 March 2009, the Committee, through the Special Rapporteur on new communications and interim measures, decided not to consider the admissibility and the substance of the case separately.

The facts as submitted by the authors

2.1 Djamel Saadoun was a doctoral student in mechanics and a lecturer at the El-Harrach Polytechnic in Algiers. He had been granted a deferment of military service in order to pursue his studies. His application for a scholarship had just been accepted and he was planning to go to France to continue his studies.

Arrest and administrative detention in the Bouzareah gendarmerie on 7 and 8 March 1996

2.2 On 7 March 1996, Djamel Saadoun received a letter instructing him to report immediately to his area gendarmerie in Bouzareah in order to perform his military service. At 5 p.m. that day, the gendarmes of Bouzareah came to his home at 5 rue du Traité, in El Biar, with a conscription order in his name and ordered him to go with them to join up. Djamel Saadoun was surprised and told them that, as a student, he had been granted a deferment of military service and that he did not understand why it was so urgent since the conscription order had arrived that very morning. He was nevertheless arrested with no explanation and no answers to his questions. Djamel Saadoun was then taken first to the Bouzareah gendarmerie along with 31 other people from his neighbourhood. They spent the night of 7 March there. They were then sent to the transport camp, known as the “army muster centre”, some 50 km from Algiers, in the *wilaya* of Blida. There they found themselves with 2,000 other conscripts, also on deferment. During his detention, which lasted nearly a week, a cousin living nearby visited him several times in the Blida camp. Djamel had sent her his military registration number, 87/161/06/576. On 14 March 1996, Djamel Saadoun was transferred to the Bechar camp.

Bechar camp, 14–18 March 1996, then Abadla camp, 18 March–June 1996

2.3 During this period of detention, which as far as the military authorities were concerned was military training, Djamel wrote three letters to his family – on 25 March, 9 April and 4 May 1996. The authors claim that these letters make it possible to establish in detail the events leading up to his disappearance. In the first letter, dated 25 March 1996, Djamel Saadoun tells his parents that on 14 March 1996, he and many other conscripts were taken from the transport camp to the military airport at Boufarik, 35 km from Algiers, and were put on a military plane for Bechar. There he remained four days, during which he was given a medical examination. He then had to put on the military uniform he had been given. According to the letter of 5 March 1996, he was then taken by bus to Abadla, some 90 km south of Bechar. He arrived in Abadla at 11 a.m. on Monday 18 March 1996. He was given to understand that there would be a committee in the Abadla camp to look at breadwinners’ cases. He and the other conscripts were lodged for two days in huts belonging to Saharans from the Polisario Front, to whom Algeria had given asylum. He was then taken to a camp where there were tents as far as the eye could see. According to Djamel Saadoun’s letters, “there were far more people than the training camp could handle. There were around 1,500 people, 700 of them draft evaders. The draft evaders included more than 400 university graduates (doctors, PhDs, engineers, etc.).” He also wrote that

they had “confiscated” his papers and his files because, “contrary to what had been stated before, [they] had been told that graduates could not be exempted [from military service]”. Djamel Saadoun wrote that training began on Saturday 23 March 1996 and that he had met some of his friends, most of whom were on deferment like himself, and a cousin, who was in the same unit.

2.4 In his letter, Djamel Saadoun also describes the living conditions and the atmosphere in the camp, and tells his family that he is unable to talk to them on the telephone because there is just one telephone booth for around 1,500 people, and no calls could be made until after 5 p.m. In his second letter, dated 9 April 1996, Djamel Saadoun writes that he does not know how long the training will last and that “things [were] very vague [on that point]”. He gives the postal address of the camp that he has been assigned to. In his last letter, of 4 May 1996, Djamel Saadoun writes that he still does not know when the training is supposed to finish and that he would be told what his assignment was at the end of May 1996.

2.5 In June 1996, Malika Gaid Youcef, Djamel Saadoun’s mother, received a call from one of Djamel’s friends, who was doing his military service in the same camp and in the same unit as her son. He told Malika Gaid Youcef that Djamel was no longer in the camp with them, that the regimental commander¹ had one day come to tell Djamel to get ready to leave and he had not seen him since.² Every morning, all the conscripts would assemble on the parade ground for roll call with the regimental commander. The morning after he left the camp, his friends asked the commander why Djamel Saadoun was not at the morning roll call. The commander told them that he had had orders the day before to instruct Djamel Saadoun to get his kit together because a committee from Algiers was coming the next day to take him away. The commander said that the committee had come to fetch Djamel Saadoun, but he did not know where they had taken him. According to information received later by the family, Djamel Saadoun was not the only one to have been picked up. The trucks waiting at the gates of the camp were fully loaded.

Measures taken by Djamel Saadoun’s family after his disappearance

2.6 The family went on several occasions to the Blida camp, and even to Abadla camp, to try to find out where Djamel Saadoun had been taken, but they got no answers. Worried, they then went on several occasions to the Bouzareah gendarmerie and their local police station to ask what had become of their son, still with no success. At the same time, Malika Gaid Youcef contacted a family acquaintance, an official in the Army high command in Aïn Naâdja, Algiers, who promised to make inquiries and call her as soon as he knew more. She never heard anything. Throughout her inquiries, the only answer she got – by telephone – from the military authorities was that “there is no such name as [Djamel Saadoun]”.

2.7 In March 1997, i.e., a year after the forced departure of Djamel Saadoun for military service, which the authors describe as arrest, the authors’ home in El Biar was searched. The apartment was empty as the authors had since moved. On 21 April 1997, Mustapha Saadoun received a money order for 708 Algerian dinars (DA) in the name of Djamel Saadoun from the postmaster at the ERG Farradj camp. This money order made the parents even more anxious over what might have become of their son, as they believed that amount was the equivalent of the monthly pay for a military conscript. However, they never managed to obtain any more information about the provenance of the money order.³

¹ The authors give the commander’s name.

² The authors do not give a date. Based on the communication submitted to the Committee later, it seems that Djamel Saadoun left Abadla camp in June 1996.

³ The authors attach a copy of the money order to the communication.

2.8 Not having received satisfactory replies to their inquiries, and in an attempt to clear up the mystery of their son's disappearance, the authors sent numerous written requests to all the relevant military, civil, judicial and administrative bodies. On the administrative front, 14 applications were presented between 1996 and 2007. On 30 July 1996, they addressed a joint application to the President of the Republic, the Minister of Interior, the Minister of Justice, the Ombudsman and the Chair of the National Human Rights Observatory (ONDH), asking for an explanation as to what might have happened to their son. Only ONDH acknowledged receipt of their letter on 9 March 1998, stating that Djamel Saadoun had indeed been arrested "on 7 March 1996 by the security services of the Bouzareah gendarmerie following receipt of a telegram (telegram No. 574 of 3 February 1996) from the head of military service in Algiers. Djamel Saadoun was then taken to the Blida muster and transport camp as he belonged to that area for military service purposes".⁴ When the authors heard that ONDH had been abolished and replaced by the National Advisory Commission for the Promotion and Protection of Human Rights (CNCPPDH), they lodged another complaint with that body on 23 December 2001 and, having received no reply to their first letter, on 8 July 2002. Finally, on 20 July 2002, CNCPPDH replied that "according to the services concerned, [Djamel Saadoun] was apprehended at his home on 7 March 1996 by the security services for involvement in subversive activities".⁵ According to the authors, this reply gave no information on either the place or conditions of detention of Djamel Saadoun and flatly contradicted the reply from ONDH mentioned above.

2.9 Given these contradictions, the authors again sought clarification from CNCPPDH on 1 September 2002, without success. The same day, the authors addressed a complaint to the Chief of Staff of the National People's Army, from whom they did not receive a reply either. On 15 August 2007, the authors again approached the President of the Republic, the Chair of CNCPPDH, the Minister of the Interior, the Representative of the Republic at the Court of Chercell, the Head of Government and the Minister of Justice.⁶ The authors further state that they contacted SOS Disparus on 28 July 2003 and the Collectif des familles des disparu(e)s en Algérie, the organization that on 19 August 2003 submitted Djamel Saadoun's case to the Working Group on Enforced or Involuntary Disappearances.

2.10 As to judicial remedies, a month after Djamel Saadoun's disappearance, the authors went to the Bouzareah gendarmerie in Algiers and to their local police station to obtain information. Through a lawyer, Mustapha Saadoun also lodged a complaint for "abduction"⁷ with the Bechar Court against an unknown person or persons. No action was taken on this complaint. The family also approached two other lawyers, one of whom now refuses all contact with the family for fear of reprisal from the Algerian authorities.⁸

⁴ The reply from ONDH is annexed to the communication.

⁵ The reply from CNCPPDH is annexed to the communication.

⁶ The joint application is annexed to the communication.

⁷ The authors do not give the date of this complaint.

⁸ The authors claim that the case of Djamel Saadoun is not unique in Algeria; more than 8,000 families are still searching for their disappeared relatives, most of them arrested by the police, the gendarmes, the militias, the military or the municipal police (*garde communale*). They also state that the majority of perpetrators of enforced disappearances, individuals who are known and have been named by witnesses or by victims' families, enjoy complete impunity to this day as the Algerian authorities have not provided a satisfactory response to the many inquiries made by associations of relatives of disappeared persons and international human rights organizations. Lastly, the authors state that since 2000, the Working Group on Enforced or Involuntary Disappearances has been asking to be allowed to visit Algeria further to its mandate, to no avail.

2.11 On 15 August 2007, a further complaint was lodged by Mustapha Saadoun with the public prosecutor at the Court of Cherrhell, the outcome of which was a communication from the city police (*sûreté urbaine*), dated 27 October 2007, suggesting that he apply to the Ministry of Defence. Later, on 8 January 2008, the public prosecutor at the Court of Cherrhell summoned Mustapha Saadoun and advised him to lodge a complaint with the court prosecutor for the *wilaya* of Bechar.

2.12 The authors also say that, as a result of the adoption of the Charter for Peace and National Reconciliation by referendum on 29 September 2005, and of its implementing legislation, which entered into force on 28 February 2006, it is now impossible to claim that the State party has effective domestic remedies of which the families of victims of enforced disappearance may avail themselves. They claim that Ordinance No. 06-01 of 27 February 2006 which implements the Charter⁹ blocks any possibility of legal action against State agents, as article 45 states that “legal proceedings may not be brought against individuals or groups who are members of any branch of the defence and security forces of the Republic for actions undertaken to protect persons and property, safeguard the nation and preserve the institutions of the Republic. Any allegation or complaint shall be declared inadmissible by the competent judicial authority.” Ordinance No. 06-01 of 27 February 2006 has thus precluded any judicial remedies since its entry into force on 28 February 2006. Accordingly, the authors claim that, although their efforts have been in vain and their inquiries fruitless in the absence of any effective remedy,¹⁰ under article 45 of Ordinance No. 06-01, they have been deprived of any redress, since they are legally unable to institute proceedings or seek a remedy. Thus, according to the authors and under the new Algerian legislation, there is no longer any available remedy within the meaning of article 2, paragraph 3, of the Covenant for the families of victims of enforced disappearance.¹¹

The complaint

3.1 The authors invoke article 2, paragraph 3, of the Covenant, arguing that their son, Djamel Saadoun, has been deprived of his legitimate right to an effective remedy because his detention has not been recognized. Not only have the authorities failed to make all the necessary inquiries to establish the circumstances in which he disappeared, identify those responsible and bring them to trial, but they deny any involvement in Djamel Saadoun’s disappearance. Moreover, the two applications submitted by the family’s lawyers have exposed the futility of any judicial proceedings, since both the complaints were dismissed, in violation of the rights guaranteed under article 2, paragraph 3.

3.2 The authors also invoke article 7 of the Covenant, arguing that the enforced disappearance of Djamel Saadoun constitutes in itself inhuman and degrading treatment.¹²

⁹ Ordinance No. 06-01 of 28 Muharram 1427 (28 February 2006), implementing the Charter for Peace and National Reconciliation, *Official Gazette* No. 11, 28 February 2006.

¹⁰ The authors refer to communication No. 147/1983, *Reverdito and Gilboa v. Uruguay*, Views adopted on 1 November 1985.

¹¹ The authors refer to the Committee’s concluding observations of 1 November 2007 on the third periodic report of Algeria (CCPR/C/DZA/CO/3, paras. 7–12), in which the Committee noted that Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation, in particular article 45, was a violation of the right to an effective remedy. Recalling the Committee’s view that, in respect of violations of fundamental rights, only remedies of a judicial nature need to be exhausted, the authors refer to communications Nos. 563/1993, *Bautista (Andreu) v. Colombia*, Views adopted on 27 October 1995; 612/1995, *Chaparro et al. v. Colombia*, Views adopted on 29 July 1997; and 778/1997, *Coronel et al. v. Colombia*, Views adopted on 24 October 2002.

¹² The authors cite communications Nos. 449/1991, *Mojica v. Dominican Republic*, Views adopted on 15 July 1994; 540/1993, *Atachahua v. Peru*, Views adopted on 25 March 1996; and 542/1993, *N’Goya v. Zaïre*, Views adopted on 25 March 1996.

Djamel Saadoun was arbitrarily deprived of his liberty and then removed from the protection of the law by the authorities, who made it impossible for him to communicate with anyone, in particular his family. The authors claim that the suffering caused by isolation of this kind and the withdrawal of all legal safeguards constitute inhuman and degrading treatment of Djamel Saadoun. The authors point to their own anguish and the distress caused by the disappearance of their only son. Mustapha Saadoun is over 90 years old and walks with difficulty owing to numerous problems with his joints. Malika Gaid Youcef is bedridden. Both have gone through and still go through every day, great physical and psychological suffering owing to their son's disappearance; they live with the constant anguish that they may die without seeing their son again or without learning the truth about his disappearance after 11 long years.¹³ Accordingly, they claim to be themselves victims of a violation of article 7 of the Covenant and cite the Committee's case law.¹⁴

3.3 The authors also invoke article 9 of the Covenant, arguing that Djamel Saadoun was a victim of two violations of this provision. First, he was arrested on 7 March 1996 by the gendarmes in Bouzareah in order to perform his military service when he was legally on deferment. After his arrest he was transferred to various official premises belonging to the Army (the gendarmerie, army muster centre, Bechar camp and lastly, Abadla camp), in which he was deprived of his liberty. This deprivation of liberty, for which no grounds has been given and which was clearly unlawful, given the legal situation of the individual concerned, constitutes arbitrary detention within the meaning of article 9 of the Covenant. In June 1996, Djamel Saadoun was arrested again by a "committee from Algiers," which resulted in his enforced disappearance, given that no information has subsequently been provided on his place of detention or what has happened to him. The fact that his detention has not been acknowledged and was carried out in complete disregard of the guarantees set forth in article 9 of the Covenant; investigations have not displayed the efficiency or effectiveness required in such circumstances; and the authorities persist in concealing what has happened to him means that he has been arbitrarily deprived of his liberty and security, as well as of the protection afforded by the guarantees specified in article 9.¹⁵

3.4 The authors also invoke article 16 of the Covenant, and note that the Algerian authorities have denied Djamel Saadoun's right to recognition as a person, as they have subjected him to unacknowledged detention and therefore removed him from the protection of the law.¹⁶

3.5 In conclusion, the authors repeat their request to the Committee to find that the State party has acted in violation of article 2, paragraph 3, articles 7, 9 and 16 of the Covenant in respect of Djamel Saadoun, and of article 2, paragraph 3, and article 7 of the Covenant in respect of the authors themselves. They also ask the Committee to request the State party to

¹³ Around 17 years, by the time of the Committee's consideration of the communication.

¹⁴ Communications Nos. 107/1981, *Quinteros v. Uruguay*, Views adopted on 21 July 1983; 1328/2004, *Kimouche v. Algeria*, Views adopted on 10 July 2007; 1327/2004, *Grioua v. Algeria*, Views adopted on 10 July 2007; and 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006. The authors also refer to the Committee's concluding observations on the second periodic report of Algeria, 18 August 1998 (CCPR/C/79/Add.95, para. 10).

¹⁵ The authors cite communications Nos. 612/1995, *Chaparro et al. v. Colombia*, Views adopted on 29 July 1997; 542/1993, *N'Goya v. Zaïre*, Views adopted on 25 March 1996; 540/1993, *Atachahua v. Peru*, Views adopted on 25 March 1996; 181/1984, *Arévalo Perez v. Colombia*, Views adopted on 3 November 1989; 139/1983, *Thomas and Conteris v. Uruguay*, Views adopted on 17 July 1985; 8/1977, *Netto, Weismann and Perdomo v. Uruguay*, Views adopted on 3 April 1980; and 56/1979, *Casariago (Cavallero) v. Uruguay*, Views adopted on 29 July 1981.

¹⁶ The authors refer to the Committee's concluding observations (CCPR/C/79/Add.95, para. 10) in which the Committee recognized that enforced disappearances might involve the right guaranteed under article 16 of the Covenant.

order independent investigations as a matter of urgency with a view to (1) locating Djamel Saadoun; (2) bringing the perpetrators of the enforced disappearance before the competent civil authorities for prosecution; and (3) provide adequate, effective and prompt reparation for the harm suffered.¹⁷

State party's observations on admissibility

4.1 On 3 March 2009, the State party, in a "background memorandum on the inadmissibility of communications submitted to the Human Rights Committee in connection with the implementation of the Charter for Peace and National Reconciliation", contested the admissibility of the present communication and 10 other communications submitted to the Committee. The State party is of the view that communications incriminating public officials, or persons acting on behalf of public authorities, in cases of enforced disappearances during the period in question — from 1993 to 1998 — should be considered within the broader context of the sociopolitical and security conditions that prevailed in the country during a period when the Government was struggling to combat terrorism.

4.2 During that period, the Government was fighting against groups that were not coordinated among themselves. As a result, there was some confusion in the manner in which a number of operations were carried out among the civilian population, and it was difficult for civilians to distinguish between the actions of terrorist groups and those of the security forces, to whom civilians often attributed enforced disappearances. Hence, according to the State party, while enforced disappearances may be due to many causes, they cannot be blamed on the Government. On the basis of data recorded by a variety of independent sources, including the press and human rights organizations, it may be concluded that the concept of disappearances in Algeria during the period in question covers six possible scenarios, none of which can be blamed on the State. The first scenario cited by the State party concerns persons reported missing by their relatives but who, in fact, had chosen to go into hiding in order to join an armed group and who instructed their families to report that they had been arrested by the security services, as a way of "covering their tracks" and avoiding being "harassed" by the police. The second scenario concerns persons who were reported missing after their arrest by the security services, but who took advantage of their subsequent release to go into hiding. The third scenario concerns persons abducted by armed groups which, because they were not identified or because they had stolen uniforms or identification documents from police officers or soldiers, were mistakenly thought to belong to the armed forces or security services. The fourth scenario concerns persons reported missing who abandoned their families, and sometimes even left the country, to escape from personal problems or family disputes. The fifth scenario concerns persons reported missing by their family but who were in fact wanted terrorists who had been killed and buried in the maquis following factional infighting, doctrinal disputes or arguments over the spoils of war among rival armed groups. The sixth scenario mentioned by the State party concerns persons reported missing who were actually living in Algeria or abroad under a false identity provided by a network of document forgers.

¹⁷ To include (a) adequate compensation, proportionate to the gravity of the offence and the particular circumstances of this case and covering physical and psychological harm, loss of opportunities, including in respect of employment and social benefits, material harm and loss of earnings, including loss of earning capacity, moral damages and expenses incurred for medicines and medical services; (b) full and complete rehabilitation including medical care and psychological support and access to legal and social services; and (c) guarantees of non-repetition, in part by the setting up of an independent commission to make a thorough investigation of the fate of disappeared persons in Algeria, whether the disappearances were caused by the authorities or armed groups.

4.3 The State party maintains that it was in view of the diversity and complexity of the situations covered by the general concept of disappearance that the Algerian legislature, following the referendum on the Charter for Peace and National Reconciliation, recommended a comprehensive approach to the issue of disappeared persons, whereby all persons who had disappeared in the context of the “national tragedy” would be cared for, all victims would be offered support to overcome their ordeal and all victims of disappearance and their beneficiaries would be entitled to redress. According to statistics from the Ministry of the Interior, 8,023 cases of disappearance have been reported, 6,774 examined, 5,704 approved for compensation and 934 rejected, with 136 still pending. A total of DA 371,459,390 has been paid out as compensation to all the victims concerned. In addition, a total of DA 1,320,824,683 has been paid out in monthly pensions.

4.4 The State party further argues that not all domestic remedies have been exhausted. It stresses the importance of distinguishing between simple formalities involving the political or administrative authorities, non-judicial remedies pursued through advisory or mediation bodies, and judicial remedies pursued through the relevant courts of justice. The State party observes that, as may be seen from the authors’ statements,¹⁸ the complainants have written letters to political and administrative authorities, petitioned advisory or mediation bodies and petitioned representatives of the prosecution service (chief prosecutors and public prosecutors), but have not, strictly speaking, initiated legal action and seen it through to its conclusion by availing themselves of all available remedies of appeal and judicial review. Of all these authorities, only the representatives of the prosecution service are authorized by law to open a preliminary inquiry and refer a case to the investigating judge. In the Algerian legal system, it is the public prosecutor who receives complaints and who, if he deems it warranted, institutes criminal proceedings. Nevertheless, in order to protect the rights of victims or their beneficiaries, the Code of Criminal Procedure authorizes complainants to sue for damages by filing a complaint with the investigating judge. In this case, it is the victim, not the prosecutor, who initiates criminal proceedings by bringing the matter before the investigating judge. This remedy, which is provided for in articles 72 and 73 of the Code of Criminal Procedure, has not utilized in this case, despite the fact that it would have enabled the victims to institute criminal proceedings and compel the investigating judge to initiate proceedings, even if the prosecution service had decided otherwise.

4.5 The State party also notes the author’s contention that the adoption by referendum of the Charter for Peace and National Reconciliation and its implementing legislation — in particular, article 45 of Ordinance No. 06-01 — rules out the possibility that any effective and available domestic remedies exist in Algeria to which the families of victims of disappearance could have recourse. On this basis, the authors believed that they did not need to bring the matter before the relevant courts, in view of the courts’ likely position and findings regarding the application of the Ordinance. However, the authors cannot invoke this Ordinance and its implementing legislation as a pretext for failing to institute the legal proceedings available to them. The State party recalls the Committee’s jurisprudence to the effect that a person’s subjective belief in, or presumption of, the futility of a remedy does not exempt that person from the requirement to exhaust all domestic remedies.¹⁹

4.6 The State party then turns its attention to the nature, principles and content of the Charter for Peace and National Reconciliation and its implementing legislation. It maintains that, in accordance with the principle of the inalienability of peace, which has become an international right to peace, the Committee should support and consolidate peace and

¹⁸ As the State party has provided a common reply to 11 different communications, it refers to the “authors”. This reference also includes the author(s) of the present communication.

¹⁹ The State party cites, in particular, communication No. 210/1986 and 225/1987, *Pratt and Morgan v. Jamaica*, Views adopted on 6 April 1989.

encourage national reconciliation with a view to strengthening States affected by domestic crises. As part of this effort to achieve national reconciliation, the State party adopted the Charter, and its implementing ordinance prescribes legal measures for the discontinuance of criminal proceedings and the commutation or remission of sentences for any person who is found guilty of acts of terrorism or who benefits from the provisions of the legislation on civil dissent, except for persons who have committed or been accomplices in mass killings, rapes or bombings in public places. The ordinance also helps to address the issue of disappearances by introducing a procedure for filing an official finding of presumed death, which entitles beneficiaries to receive compensation as victims of the “national tragedy”. Social and economic measures have also been put in place, including the provision of employment placement assistance and compensation for all persons considered victims of the “national tragedy”. Finally, the ordinance prescribes political measures, such as a ban on holding political office for any person who exploited religion in the past in a way that contributed to the “national tragedy”, and establishes the inadmissibility of any proceedings brought against individuals or groups who are members of any branch of Algeria’s defence and security forces for actions undertaken to protect persons and property, safeguard the nation and preserve its institutions.

4.7 In addition to the establishment of funds to compensate all victims of the “national tragedy”, the sovereign people of Algeria have, according to the State party, agreed to a process of national reconciliation as the only way to heal the wounds inflicted. The State party insists that the proclamation of the Charter for Peace and National Reconciliation reflects a desire to avoid confrontation in the courts, media outpourings and political score-settling. The State party is therefore of the view that the author’s allegations are covered by the comprehensive domestic settlement mechanism provided for in the Charter.

4.8 The State party asks the Committee to note the similarity of the facts and situations described by the authors and to take into account the sociopolitical and security context in which they occurred; to find that the authors failed to exhaust all domestic remedies; to recognize that the authorities of the State party have established a comprehensive domestic mechanism for processing and settling the cases referred to in these communications through measures aimed at achieving peace and national reconciliation consistent with the principles of the Charter of the United Nations and subsequent covenants and conventions; to find the communication inadmissible; and to request that the authors seek an alternative remedy.

Additional observations by the State party on the admissibility of the communication

5.1 On 9 October 2009, the State party transmitted a further memorandum to the Committee, in which it raises the question of whether the submission of a series of individual communications might not actually amount to an abuse of procedure aimed at bringing before the Committee a broad historical issue involving causes and circumstances of which the latter may be unaware. The State party observes in this connection that these “individual” communications dwell on the general context in which the disappearances occurred, focusing solely on the actions of the security forces and never mentioning those of the various armed groups that used criminal concealment techniques to incriminate the armed forces.

5.2 The State party insists that it will not address the merits of these communications until the issue of their admissibility has been settled, since all judicial or quasi-judicial bodies have a duty to deal with preliminary questions before considering the merits. According to the State party, the decision in these cases to consider questions of admissibility and the merits jointly and simultaneously — aside from the fact that it was not arrived at on the basis of consultation — seriously prejudices the proper consideration of the communications in terms of both their general nature and their intrinsic particularities.

Referring to the rules of procedure of the Human Rights Committee, the State party notes that the sections relating to the Committee's procedure to determine the admissibility of communications are separate from those relating to the consideration of communications on the merits, and that therefore these questions could be considered separately. Concerning the exhaustion of domestic remedies, the State party stresses that the authors did not use channels that would have allowed consideration of the case by the Algerian judicial authorities for any of the complaints or requests for information that they submitted.

5.3 Recalling the Committee's jurisprudence regarding the obligation to exhaust domestic remedies, the State party stresses that mere doubts about the prospect of success or concerns about delays do not exempt the authors from the obligation to exhaust these remedies. As to the question of whether the promulgation of the Charter for Peace and National Reconciliation has barred the possibility of appeal in this area, the State party replies that the failure by the authors to submit their allegations to examination has so far prevented the Algerian authorities from taking a position on the scope and limitations of the applicability of the Charter. Moreover, under the Ordinance in question, the only proceedings that are inadmissible are those brought against "members of any branch of the defence and security forces of the Republic" for actions consistent with their core duties towards the Republic, namely, to protect persons and property, safeguard the nation and preserve its institutions. On the other hand, any allegations concerning actions attributable to the defence or security forces that can be proven to have taken place in any other context are subject to investigation by the appropriate courts.

Comments on the State party's observations on admissibility

6.1 On 17 December 2012, the authors' counsel informed the Committee that the authors had passed away since the submission of their initial communication to the Committee.²⁰ Their daughter, Nouria Saadoun, Djamel Saadoun's sister, was continuing the search and proceedings before the Committee in relation to the communication.²¹

6.2 On the same day, the authors' counsel submitted comments on the State party's observations on admissibility. Counsel draws the Committee's attention to the general nature of the State party's reply to the communication, a reply that is systematically presented for all the individual communications pending before the Committee since the entry into force of the Algerian Charter and its implementing legislation; no mention is made of the particular features of the case or the remedies sought by the victim's family. As to the exhaustion of domestic remedies, counsel refers to the authors' initial communication and again points out that they attempted numerous remedies, all of which proved futile. Of the numerous judicial and non-judicial complaints they lodged between 1996 and 2007, none has led to a thorough inquiry or criminal proceedings, despite the fact that their allegations were serious ones of enforced disappearance.²² Counsel further points out that the fact that the family has not sued for damages does not make the communication inadmissible since that procedure does not constitute an appropriate remedy.²³ Counsel recalls that the authors lodged several complaints with the Bechar and Cherchell courts and

²⁰ Mustapha Saadoun died on 26 January 2009, and Malika Gaid Youcef died on 26 May 2009.

²¹ On 27 March 2013, Nouria Saadoun submitted a written confirmation to the Committee, that she wished to pursue the procedure before the Committee on behalf of her brother, Djamel Saadoun, her parents and herself.

²² The authors cite communication No. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 7.4.

²³ The authors cite the Committee's Views in communications Nos. 1753/2008, *Guezout et al. v. Algeria*, 19 July 2012, para. 7.4; 1905/2009, *Khirani v. Algeria*, 26 March 2012, para. 6.4; and 1781/2008, *Berzig v. Algeria*, 31 October 2011, para. 7.4.

that no action was taken, and again states that Ordinance 06-01 precludes any possibility of legal action against agents of the State, since article 45 unequivocally states that any allegation or complaint against agents of the State shall automatically be declared inadmissible by the competent judicial authority, thereby rendering unavailable all remedies invoked against agents of the State on behalf of victims of disappearances.²⁴ Accordingly, the authors' counsel claims that article 45 of Ordinance 06-01, which disregards the rights guaranteed under the Covenant, cannot be cited in counterargument against the authors, and that the authors have exhausted all available domestic remedies.

6.3 The authors' counsel rejects the State party's argument that the Committee should take a global approach to cases of enforced disappearance. According to counsel, such an approach would not be consistent with article 5 of the Optional Protocol or with rule 96 of the Committee's rules of procedure. The fact that Djamel Saadoun disappeared in 1996 in no way justifies depriving him of his right to have his communication considered by the Committee. Counsel further recalls that the Committee has expressed concern that the provisions of the implementing legislation of the Charter seem to promote impunity and infringe the right to an effective remedy, and has called upon the State party, in its concluding observations, to inform the public of the right of individuals to address the Committee under the Optional Protocol.²⁵ Counsel further notes that the legislation implementing the Charter requires the families of the disappeared to obtain a finding of presumed death in order to claim financial compensation. No effective investigation to ascertain the fate of the disappeared person is carried out by the police or the courts as part of that procedure. In these circumstances, the legislation implementing the Charter constitutes, in counsel's view, an additional violation of the rights of the families of the disappeared and is certainly not a satisfactory response to the problem of disappearances, which should be based on respect for the right to the truth, justice, full redress and the preservation of the memory of the events. Accordingly, counsel repeats that the mechanism implementing the Charter cannot be used to stop victims from submitting a communication to the Committee, and requests that the Committee find the authors' communication admissible.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Firstly, the Committee points out that the Special Rapporteur's decision not to separate the decisions on admissibility and the merits (see para. 1.2 above) does not mean that the Committee cannot consider the two matters separately nor does it imply simultaneous consideration. Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

7.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee must ascertain that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the disappearance of Djamel Saadoun was reported to the Working Group on Enforced or Involuntary Disappearances in 2003. However, it recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights

²⁴ The authors cite the Committee's Views in communications Nos. 1753/2008, *Guezout et al. v. Algeria*, 19 July 2012 and 1905/2009, *Khirani v. Algeria*, 26 March 2012, and its concluding observations CCPR/C/DZA/CO/3, para. 7 (a).

²⁵ CCPR/C/DZA/CO/3, para. 8.

Council, and whose mandates are to examine and report publicly on human rights situations in specific countries or territories, or cases of widespread human rights violations worldwide, do not generally constitute an international procedure of investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.²⁶ Accordingly, the Committee considers that the examination of Djamel Saadoun's case by the Working Group on Enforced or Involuntary Disappearances does not render it inadmissible under this provision.

7.3 The Committee notes that, in the State party's view, the authors have not exhausted domestic remedies, since they did not consider the possibility of bringing the matter before the investigating judge and suing for damages in criminal proceedings under articles 72 and 73 of the Code of Criminal Procedure. The Committee notes that, according to the State party, the authors simply wrote letters to political and administrative authorities, petitioned advisory or mediation bodies and petitioned representatives of the prosecution service (chief prosecutors and public prosecutors), but have not actually initiated legal proceedings and seen them through to their conclusion by availing themselves of all available remedies of appeal and cassation. The Committee notes in that regard that, on 15 August 2007, the authors lodged a complaint with the prosecutor at the Court of Cherrhell. No proceedings were initiated, and all the authors received in response was a report from the urban police suggesting that they approach the Ministry of Defence. The only outcome of a subsequent summons by the prosecutor at the Court of Cherrhell on 8 January 2008 was advice to the authors that they should lodge a complaint with the court prosecutor of the *wilaya* of Bechar. None of the judicial remedies invoked by the authors led to an effective inquiry or the prosecution and conviction of those responsible. The Committee also takes note of the authors' argument that, since the entry into force of Ordinance No. 06-01, the families of victims of enforced disappearance have been deprived of any legal right of action to establish what happened to their relative, since any such action is liable to criminal prosecution.

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, particularly enforced disappearances or violations of the right to life, but also to prosecute, try and punish anyone held to be responsible for such violations.²⁷ Although the authors repeatedly contacted the competent authorities concerning their son's disappearance, the State party failed to conduct a thorough and effective investigation into Djamel Saadoun's disappearance, despite the fact that serious allegations of enforced disappearance were involved. The State party has also failed to provide sufficient evidence that an effective remedy is de facto available, since Ordinance No. 06-01 of 27 February 2006 continues to be applicable despite the Committee's recommendations that it should be brought into line with the Covenant.²⁸ Reiterating its previous case law, the Committee considers that to sue for damages for offences as serious as those alleged in the present case cannot be considered a substitute for the charges that should be brought by the public prosecutor.²⁹ The Committee finds that article 5, paragraph 2 (b), of the Optional Protocol is not an impediment to the admissibility of the communication.

²⁶ See, inter alia, communications Nos. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 7.2; and 540/1993, *Atachahua v. Peru*, Views adopted on 25 March 1996, para. 7.1.

²⁷ See, inter alia, communications Nos. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 7.4; and 1905/2009, *Khirani v. Algeria*, Views adopted on 26 March 2012, para. 6.4.

²⁸ Concluding observations of the Human Rights Committee, CCPR/C/DZA/CO/3, paras. 7, 8 and 13.

²⁹ Communications Nos. 1588/2007, *Benaziza v. Algeria*, Views adopted 26 July 2010, para. 8.3; 1781/2008, *Berzig v. Algeria*, para. 7.4; and 1905/2009, *Khirani v. Algeria*, para. 6.4.

7.5 The Committee considers that, for the purposes of admissibility, the authors must exhaust only the effective remedies available for the alleged violation: in the present case, valid remedies for enforced disappearance.

7.6 The Committee finds that the authors have sufficiently substantiated their allegations insofar as they raise issues under articles 7, 9, 16 and 2, paragraph 3, of the Covenant, and therefore proceeds to consider the communication on its merits.

Consideration of the merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

8.2 The State party provided general and collective comments on the serious allegations made by the authors of such complaints, and has been content to argue that communications incriminating public officials, or persons acting on behalf of public authorities in cases of enforced disappearance between 1993 and 1998 must be looked at in the broader context of the domestic sociopolitical and security environment that prevailed during a period in which the Government had to deal with terrorism. The Committee observes that the Covenant demands that the State party concern itself with the fate of every individual, and treat every individual with respect for the dignity inherent in every human being. It further recalls its jurisprudence, according to which 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.

³⁰ Ordinance No. 06-01, without the amendments recommended by the Committee, appears to promote impunity and therefore cannot, as it currently stands, be considered compatible with the provisions of the Covenant.

8.3 The Committee notes that the State party has not replied to the author's allegations with regard to the merits of the case, and the documentation from the Advisory Commission for the Promotion and Protection of Human Rights (CNCPPDH) confirms several of the authors' allegations. The Committee recalls its jurisprudence³¹ according to which the burden of proof should not rest solely on the author of a communication, especially given that the authors and the State party do not always have the same degree of access to evidence, and that often only the State party holds the necessary information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has a duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with whatever information is available to it.³² In the absence of any explanations from the State party in this respect, or even the possibility of seriously refuting the incontrovertible evidence of the victim's detention, due weight must be given to the author's allegations, provided they have been sufficiently substantiated.

8.4 The Committee notes that, according to the authors, Djamel Saadoun was arrested at his home on 7 March 1996 by the gendarmes, who ordered him to join the military even though he was under deferment; that, after a night at the Bouzareah gendarmerie, he was

³⁰ Communications Nos. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 11; 1588/2007, *Benaziza v. Algeria*, para. 9.2; 1781/2008, *Berzig v. Algeria*, para. 8.2; and 1905/2009, *Khirani v. Algeria*, para. 7.2.

³¹ See, inter alia, communications Nos. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, Views adopted on 26 July 2010, para. 7.4; and 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 8.3.

³² Communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.3.

taken to the army muster centre in the *wilaya* of Blida, where he remained for approximately one week, was given an army registration number, and received visits from family. It further notes that between March and June 1996, he was transferred to the Bechar camp, then to Abadla, from where he had written to his parents; and that in June 1996, Malika Gaid Youcef received a call telling her that Djamel Saadoun was no longer at Abadla camp. None of the measures taken by the family since have shed any light on Djamel Saadoun's fate. The Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. In this context, the Committee recalls its general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, which recommends that States parties make provision against incommunicado detention. It notes that, in this case, in June 1996, Djamel Saadoun was taken from Abadla camp by a "committee from Algiers" to an unknown destination. His fate is still unknown. In the absence of a satisfactory explanation from the State party, the Committee considers that this disappearance constitutes a violation of article 7 of the Covenant with regard to Djamel Saadoun.³³

8.5 The Committee also takes note of the anguish and distress caused to the authors by Djamel Saadoun's disappearance. It considers that the facts before it disclose a violation with respect to the authors of article 7 of the Covenant.³⁴

8.6 With regard to the alleged violation of article 9, the Committee notes the authors' allegations to the effect that Djamel Saadoun was arrested on 7 March 1996 by the gendarmes and, without explanation, ordered to join the army, despite being under deferment; that after his arrest he was held for one night in the Bouzareah gendarmerie, then for a week at Blida camp, before being taken to the camp at Bechar and later Abadla. Two months later, his family learned from an unofficial source that he was no longer at Abadla camp and had reportedly been arrested by a "committee from Algiers". Djamel Saadoun became the victim of enforced disappearance, since no information was subsequently given to his family on where he was detained or what had happened to him. Two years after his disappearance the authors learned, from an advisory body, the National Human Rights Observatory (ONDH), that Djamel Saadoun had been arrested to perform his military service. However, in July 2002, that is, six years after his disappearance, the family learned from the National Advisory Commission for the Promotion and Protection of Human Rights (CNCPPDH), the successor to ONDH, that Djamel Saadoun had been apprehended by the security services for "involvement in subversive activities". Yet, Djamel Saadoun was never informed of the criminal charges against him or brought before a judge or other judicial authority, which would have enabled him to challenge the legality of his detention; and that no official information was given to the author or his family regarding his whereabouts or his fate. In the absence of satisfactory explanations from the State party, the Committee finds a violation of article 9 with respect to Djamel Saadoun.³⁵

8.7 With regard to the alleged violation of article 16, the Committee reiterates its established jurisprudence, according to which the intentional removal of a person from the protection of the law for a prolonged period of time may constitute a refusal to recognize that person as a person before the law if the victim was in the hands of the State authorities

³³ Communications Nos. 1905/2009, *Khirani v. Algeria*, para. 7.5, 1781/2008, *Berzig v. Algeria*, para. 8.5, 1295/2004, *El Awani v. Libyan Arab Jamahiriya*, Views adopted on 11 July 2007, para. 6.5; 1779/2008, *Mezine v. Algeria*, Views adopted on 25 October 2012, para. 8.5.

³⁴ Communication No. 1905/2009, *Khirani v. Algeria*, para. 7.6; communication No. 1781/2008, *Berzig v. Algeria*, para. 8.6; and communication No. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, para. 7.5.

³⁵ See, inter alia, communications Nos. 1905/2009, *Khirani v. Algeria*, para. 7.7, and 1781/2008, *Berzig v. Algeria*, para. 8.7.

when last seen and if the efforts of his or her relatives to obtain access to potentially effective remedies, including judicial remedies (Covenant, art. 2, para. 3) have been systematically impeded.³⁶ In the present case, the Committee notes that the State party has not furnished any explanation concerning the fate or whereabouts of Djamel Saadoun, despite the multiple requests addressed by the authors to the State party. The Committee concludes that Djamel Saadoun's enforced disappearance some 17 years ago denied him 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.

8.8 The authors invoke article 2, paragraph 3, of the Covenant, which imposes on States parties the obligation to ensure an effective remedy for all persons whose rights under the Covenant have been violated. The Committee attaches importance to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of rights violations. It refers to its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, according to which the failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. In the current case, although the victim's family repeatedly contacted the competent authorities regarding Djamel Saadoun's disappearance, including judicial authorities such as the public prosecutor, all their efforts led to nothing and the State party failed to conduct a thorough and effective investigation into the disappearance of Djamel Saadoun. Furthermore, the absence of the legal right to initiate judicial proceedings since the promulgation of Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation continues to deprive Djamel Saadoun and his family of any access to an effective remedy, since the Ordinance prohibits, on pain of imprisonment, the initiation of legal proceedings to shed light on the most serious crimes, such as enforced disappearance.³⁷ The Committee concludes that the facts before it reveal a violation of article 2, paragraph 3, read in conjunction with articles 7, 9 and 16 of the Covenant with regard to Djamel Saadoun, and of article 2, paragraph 3, read in conjunction with article 7 of the Covenant, with regard to the authors.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses violations by the State party of articles 7, 9, 16 and 2, paragraph 3, read in conjunction with articles 7, 9 and 16 of the Covenant, with regard to Djamel Saadoun. The Committee also finds a violation of article 2, paragraph 3, read alone and in conjunction with article 7 of the Covenant, with regard to the authors.

10. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the family of Djamel Saadoun with an effective remedy, including by: (a) conducting a thorough and effective investigation into the disappearance of Djamel Saadoun; (b) providing the family with detailed information about the results of its investigation; (c) releasing Djamel Saadoun immediately if he is still being detained incommunicado; (d) in the event that Djamel Saadoun is deceased, handing over his remains to his family; (e) prosecuting, trying and punishing those responsible for the violations committed; and (f) providing adequate compensation to the family for the violations suffered and to Djamel Saadoun, if he is still alive. Notwithstanding the terms of Ordinance No. 06-01, the State party should ensure that it does not impede enjoyment of the right to an effective remedy for crimes such as torture, extrajudicial killings and

³⁶ Communications Nos. 1905/2009, *Khirani v. Algeria*, para. 7.8; 1781/2008, *Berzig v. Algeria*, para. 8.8; 1780/2008, *Zarzi v. Algeria*, Views adopted 22 March 2011, para. 7.9; 1588/2007, *Benaziza v. Algeria*, para. 9.8; 1327/2004, *Grioua v. Algeria*, Views adopted on 10 July 2007, para. 7.8; and 1495/2006, *Madaoui v. Algeria*, Views adopted on 28 October 2008, para. 7.7.

³⁷ CCPR/C/DZA/CO/3, para. 7.

enforced disappearances. The State party is also under an obligation to take steps to prevent similar violations in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure for all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information concerning the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Appendix

Partly dissenting opinion of Committee member, Mr. Víctor Rodríguez Rescia

1. This opinion concurs with the decision of the Human Rights Committee on communication No. 1806/2008 in finding a violation of the rights set out in article 2, paragraph 3, read in conjunction with articles 7, 9 and 16 of the Covenant, with regard to Djamel Saadoun, and of article 2, paragraph 3, read in conjunction with article 7 of the Covenant, with regard to the authors.

2. As in my partly dissenting opinions on communication No. 1807/2008 (*Mechani v. Algeria*) and communication No. 1791/2008 (*Sahbi v. Algeria*), as well as in the opinion of my colleague, Mr. Salvioli, on communication No. 1791/2008, and given that the present communication deals with a similar situation in which the enforced disappearance of a victim whose whereabouts have not been revealed by an investigation has gone completely unpunished, I am afraid that once again I cannot agree with the Committee regarding the effects of the very existence, and application in this particular case, of Ordinance No. 06-01 of 27 February 2006 (and, in particular, article 45 thereof) giving effect to the Charter for Peace and National Reconciliation adopted by referendum on 29 September 2005, which prohibits taking any legal action against members of the Algerian defence and security services for the offences of torture, extrajudicial executions and enforced disappearances. Under the Ordinance, anyone submitting such an allegation or complaint is liable to a penalty of 3 to 5 years' imprisonment and a fine of 250,000 to 500,000 Algerian dinars.

International responsibility for serious human rights violations in the form of acts of the State originating in the existence and/or application of a law

3. The issuance by a State party to the Covenant, such as Algeria in the present communication, of a regulation or ordinance of general application that impedes the investigation of human rights violations such as enforced disappearances, torture or extrajudicial executions is, regardless of the reasons and context in which it is issued, in direct contravention of article 2, paragraph 3, of the Covenant, which refers to the existence and effectiveness of a legal remedy.

4. The failure by a State party to the Covenant, such as Algeria in the present communication, to bring its domestic legislation into line with the provisions of the Covenant by amending, reforming or abrogating a regulation or ordinance of general application that impedes the investigation of human rights violations such as enforced disappearances, torture or extrajudicial executions, is in direct contravention of article 2, paragraph 2, of the Covenant.

5. The very existence of the part of Ordinance No. 06-01 that establishes the possibility of sentencing anyone who reports such offences to prison terms and fines is a violation of the International Covenant on Civil and Political Rights, as it creates a platform for impunity from investigation, conviction and claims for redress in cases of serious human rights violations, including in cases of enforced disappearance like that of Djamel Saadoun, whose whereabouts are to this day unknown.

6. Even though the Committee established the remedial effects of applying the Ordinance in this particular case, the reference to the legal effects of the regulation is extremely weak and inadequate. In paragraph 10, the Committee should have made a more forceful statement valid *erga omnes* regarding Algeria's general obligation to rescind the application of article 45 of Ordinance No. 06-01. The Committee should have established

that the express prohibition in the Ordinance of taking any legal action to investigate cases of torture, extrajudicial executions and enforced disappearances violates the general obligation set out in article 2, paragraph 2, of the Covenant, under which Algeria should, “where not already provided for by existing legislative or other measures, ... take the necessary steps, in accordance with its constitutional processes and with the provisions of the ... Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the ... Covenant”.

7. Algeria has systematically tried to justify its failure to investigate cases of enforced disappearance by invoking Ordinance No. 06-01 and has repeatedly told the Committee that the submission of a series of individual communications to the Committee could be an abuse of procedure aimed at bringing before the Committee a broad historical issue involving causes and circumstances of which the Committee is unaware. This argument should be firmly rejected. I believe that, unless the Committee makes it clear to Algeria that it must strictly apply article 2, paragraph 2, of the Covenant and thus adopt and adapt its legislation to provide an effective remedy for every case brought before the Committee in communications relating to offences that have gone unpunished as a result of the application of Ordinance 06-01, those who cannot obtain justice or learn the truth because of the obstacles so crudely thrown up by the existence and application of the Ordinance will continue to be doubly victimized. Unless the Committee is more forceful in demanding the general abrogation of article 45 of Ordinance No. 06-01, the Covenant’s guarantee of an effective remedy to ensure the prevention, investigation and punishment of the serious human rights violations addressed repeatedly by the Committee in the present and other communications¹ will continue to be locked in a cycle of ineffectiveness.

8. As regards the section on remedies, there is an urgent need for the Committee to make a clear recommendation based on the *iura novit curia* principle, to ensure that Algeria fulfils its general obligation to bring its legislation into line with article 2, paragraph 2, so as to give effect to the remedy provided for in article 2, paragraph 3, of the Covenant in respect of the outrageous article of Ordinance No. 06-01 that imposes a prison term on anyone with the temerity to report and seek an investigation into violations of the human rights of their tortured, executed or disappeared family members. In the present and in earlier similar communications, the Committee should have been more forceful in upholding the human right to seek a remedy and access to justice, as the *sine qua non* for preventing similar violations from taking place in Algeria. The obligation to avoid repetition requires this. The plight of victims and their families who are powerless to report human rights violations should inspire a crusade against impunity in the context of the recognition of the right to an effective remedy regardless of the circumstances in which the violations took place.

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee’s annual report to the General Assembly.]

¹ Communications Nos. 1196/2003, *Boucherf v. Algeria*; 1588/2007, *Benaziza v. Algeria*; 1781/2008, *Djebrouni v. Algeria*, para. 8.2; 1905/2009, *Ouaghliissi v. Algeria*; 1807/2008, *Mechani v. Algeria*; and 1791/2008, *Sahbi v. Algeria*.