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Human Rights Committee

Communication No. 1924/2010

Views adopted by the Committee at its 111th session (7–25 July 2014)

Submitted by:	Zohra Boudehane (represented by Rachid Mesli, Alkarama for Human Rights)
Alleged victims:	Tahar Bourefis (husband of the author), Bachir Bourefis (son of the author) and the author herself
State party:	Algeria
Date of communication:	19 November 2009 (initial submission)
Document reference:	Special Rapporteur's rule 97 decision, transmitted to the State party on 29 December 2009 (not issued in document form)
Date of adoption of Views:	24 July 2014
Subject matter:	Enforced disappearance
Substantive issues:	Right to life; prohibition of torture and cruel or inhuman treatment; right to liberty and security of person; respect for the inherent dignity of the human person; recognition as a person before the law and the right to an effective remedy; unlawful interference with the home and right to family life
Procedural issue:	Exhaustion of domestic remedies
Articles of the Covenant:	Articles 2 (para. 3), 6 (para. 1), 7, 9, 10 (para. 1), 16, 17 and 23 (para. 1)
Articles of the Optional Protocol:	Article 5 (para. 2 (b))

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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 (111th session)

concerning

Communication No. 1924/2010*

Submitted by:	Zohra Boudehane (represented by Rachid Mesli, Alkarama for Human Rights)
Alleged victims:	Tahar Bourefis (husband of the author), Bachir Bourefis (son of the author) and the author herself
State party:	Algeria
Date of communication:	19 November 2009 (initial submission)

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

Meeting on 24 July 2014,

Having concluded its consideration of communication No. 1924/2010, submitted to the Human Rights Committee by Zohra Boudehane 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 author of the communication and the State party,

Adopts the following:

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

1.1 The author of the communication, which is dated 19 November 2009, is Zohra Boudehane, who claims that her husband, Tahar Bourefis, born in 1936 and the father of 10 children, and her son, Bachir Bourefis, born in 1954, married and the father of 7 children, were the victims of violations by Algeria of articles 2 (para. 3), 6 (para. 1), 7, 9, 10 (para.1), 16, 17 and 23 (para. 1) of the Covenant. The author claims that she herself, together with her nine remaining children, is the victim of violations of articles 2 (para. 3), 7, 17 and 23 (para. 1) of the Covenant. She is represented by Rachid Mesli of the NGO Alkarama for Human Rights.

* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu. Pursuant to rule 90 of the Committee's rules of procedure, Committee member Lazhari Bouzid did not participate in the consideration of the communication.

1.2 On 29 December 2009, the Committee, through its Special Rapporteur on New Communications and Interim Measures, decided not to grant the author protection measures requesting the State party to refrain from taking criminal proceedings or any other measure to punish or intimidate the author or members of her family on the grounds of the present communication. On 10 May 2010, the Committee, through its Special Rapporteur on New Communications and Interim Measures, decided not to examine the admissibility of the communication separately from the merits.

The facts as submitted by the author

2.1 As a civil servant with the Ministry of Religious Affairs, Tahar Bourefis was a teacher and imam at the mosque of Kaous, a town near to his place of residence. He was a militant of the Front Islamique du Salut (Islamic Salvation Front) (FIS). For that reason, he was the subject of threats by the security forces and had told the author that he was afraid that he would be murdered or kidnapped by the army or the police.

2.2 On the night of 22 to 23 August 1996, soldiers burst into Mr. Bourefis' home and arrested him. They were looking for him specifically and they took him away after telling the author that it was a matter of simple routine checks and that her husband would be released in about 10 hours. The author saw her husband being taken with about 20 civilians from the village in a bus that had been requisitioned from one of the inhabitants. Escorted by two military vehicles, the bus, driven by its owner, left in the direction of Jijel, where the operational military sector headquarters is located. The owner of the bus returned the next morning and told the author that he had left the arrested individuals at the Jijel military sector barracks.

2.3 The day after the arrest, the author went immediately to the Jijel military sector headquarters to find out what had happened to her husband and why he had been arrested. The soldiers told her that he was not being held at the barracks and denied having carried out the night-time arrests. The author subsequently tried several times to obtain information from military personnel, always to no avail.

2.4 In December 1996, two persons who had been arrested at the same time as the author's husband and had been released some weeks afterwards informed the author that they had been held in the same cell as her husband on the first night of their detention. Since then, the author has not had any information about what has happened to her husband.

2.5 Bachir Bourefis, the author's son, was suspected by the authorities of being a supporter of FIS. He was first arrested by the military at the beginning of August 1994 and was held incommunicado at Jijel military sector headquarters for two months, until October 1994, when he was released. He was traumatized, had lost weight and had scars from the torture he had undergone, such as electric shocks, the rag torture and burns to several parts of his body. He had also been threatened with death if he were to speak of the torture he had suffered.

2.6 On 22 December 1996, some months after his father had been arrested, the author's son was arrested after responding to a summons from the head of the local gendarmerie brigade. He was accompanied by his wife and his 4-year-old son, who were forced to leave by the gendarmes. The next day, the author went with her daughter-in-law to the gendarmerie to demand that her son be released. The author claims that the gendarmes mistreated them and denied that they were holding Bachir Bourefis, even though they handed over keys that belonged to him. The author tried again to find out what had happened to her son, but the gendarmes would not tell her, and insulted and threatened her.

2.7 Four months after the disappearance of the author's son, the gendarmes acknowledged that he had been held at the gendarmerie, but they said that he had been transferred the previous day to Jijel military sector. When the author went there with her

daughter-in-law, the soldiers denied they were holding Bachir Bourefis and threatened to kidnap all their family members if the women persisted in their quest. Since then, the author has not received any information on her son's fate.

2.8 On 12 March 1997, Slimane Bourefis, another of the author's sons, was arrested and tortured by gendarmes, who accused him of belonging to a support network for the armed Islamist groups. He was threatened with the same fate as his father and his brother if he did not acknowledge his membership of the network. He was, however, released after 15 days. The author maintains that her son Bachir was arrested in reprisal for her attempts to find out what had happened to her husband, a common practice by the security forces at the time of the "national tragedy". The author also received threats several times because of her attempts to find out what had happened to the two men who had disappeared.

2.9 Given the security context at the time, and since she had to look after her nine remaining children, some of whom were small children or teenagers, the author waited for the general security situation in the country to improve before once again approaching the authorities. In 2004, the author initiated proceedings before the court of Taher; despite what she had been told, the proceedings proved to be simply a request for a declaration of disappearance in respect of her husband by the court. Pursuant to a statement falsely attributed to the author, the court concluded that Tahar Bourefis had been kidnapped by an unidentified armed group. In February 2005, the author and her daughter-in-law wrote to the president of the Advisory Commission for the Protection and Promotion of Human Rights to ask it to take action in respect of Tahar and Bachir Bourefis, to no avail. In September 2005, with the assistance of a lawyer, she lodged a formal complaint with the public prosecutor of the court of Taher for abduction and unlawful imprisonment, which was shelved. On 30 July 2006, the author wrote to the President of the Republic, the Prime Minister, the Minister of the Interior and the Minister of Justice to ask for an investigation to be opened into the circumstances of her husband's disappearance, to no avail.

2.10 Finally, on 6 October 2006, the author requested a declaration of disappearance in respect of her husband from the gendarmerie, which sent a report dated 19 December 2006 testifying that "following investigations", it had been established that Tahar Bourefis was missing. A similar report had been drawn up on 7 May 2006 for her son on the request of his wife. The author then repeated her request for investigations to be opened, still without success. On 25 June 2007, the author lodged another complaint with the military prosecutor of Constantine since the presumed perpetrators of the disappearances of her husband and her son were military personnel. The military court took no action on the complaint. On the same date, the author again submitted a request to the public prosecutor of Taher for an investigation to be opened into the circumstances of her son's disappearance; this was also dismissed in January 2009.

The complaint

3.1 The author alleges that her husband and her son were victims of enforced disappearance as defined by article 7, paragraph 2, subparagraph (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. They disappeared after being arrested by security forces of the State party, by officials acting in an official capacity.

3.2 The author underlines that it is probable that her husband and her son died in detention. She maintains that, even if they are still alive after all these years, the fact that they are being held in incommunicado detention increases the risk to their lives, since they are still at the mercy of their jailers, beyond any legal controls or monitoring mechanism. The author considers that this situation constitutes a violation of article 6, paragraph 1, of the Covenant with regard to the two disappeared persons.

3.3 The author considers that incommunicado detention establishes an environment that encourages acts of torture since the detainees are removed from the protection of the law. In this regard, the author recalls the Committee's jurisprudence, according to which incommunicado detention, which is indefinite detention with a complete lack of contact with family and the outside world, in itself constitutes a violation of article 7 of the Covenant.[1] The author furthermore maintains that the treatment suffered by her son (electrocution, suffocation, burns) during the two months he was held incommunicado, after being arrested by soldiers in August 1994, constitute acts of torture in violation of article 7 of the Covenant with regard to Bachir Bourefis. Lastly, the author considers that the anguish and distress that she herself and her family have experienced all these years because of their uncertainty about the fate of the two disappeared persons have been sustained by the authorities' silence and constitute a violation of article 7 of the Covenant with regard to the author and her family.

3.4 The author moreover insists that the arrest and incommunicado detention of her husband and her son, which have still not been acknowledged by the State party, constitute arbitrary arrest and detention in breach of article 9, paragraphs 1 to 4, of the Covenant. The disappeared persons were never notified of the reasons for their arrest or the accusations made against them. They were never brought before a judicial authority and were not able to challenge the lawfulness of their detention.

3.5 The author contends that the incommunicado detention of her husband and her son for many years also constitutes a violation of their right to be treated with humanity and with respect for the inherent dignity of their person during their detention, in breach of article 10, paragraph 1, of the Covenant.

3.6 The author considers that, because of their incommunicado detention, her husband and her son were not able to assert their fundamental rights, which breached their right to recognition as persons before the law guaranteed under article 16 of the Covenant. The author refers to the Committee's established jurisprudence, according to which abducting a person with the intention of removing them from the protection of the law for a prolonged period of time may constitute a denial of their right to recognition as a person before the law if the victim was in the hands of the State authorities when last seen and if the efforts of their relatives to obtain access to effective remedies, including legal remedies, have been systematically impeded. In such situations, disappeared persons are in practice deprived of their capacity to exercise entitlements under law and of access to any possible remedy as a direct consequence of the actions of the State, which must be interpreted as a refusal to recognize such victims as persons before the law.[2]

3.7 The author claims that the circumstances in which her husband was arrested at home, by forced entry in the middle of the night, constitute an illegal and arbitrary interference into the private life, the family and the residence of the author and her children, as well as of her disappeared husband, in violation of article 17 of the Covenant.[3]

3.8 According to the author, the disappearance of her husband and her son deprived their two families of their husband, father and brother and deprived the disappeared persons

[1] Communications No. 449/1991, *Mojica v. Dominican Republic*, Views adopted on 15 July 1994; and No. 540/93, *Laureano Atachahua v. Peru*, Views adopted on 25 March 1996.

[2] The author quotes communications No. 1328/2004, *Cheraitia v. Algeria*, Views adopted on 10 July 2007; and No. 1327/2004, *Atamna v. Algeria*, Views adopted on 10 July 2007.

[3] The author quotes communication No. 687/1996, *Rojas García v. Colombia*, Views adopted on 3 April 2001, in which the Committee considered that the raid by hooded police officers in the middle of the night, through the roof of the house, constituted arbitrary interference in the residence of the Rojas García family.

of their wives and children, in violation of their right to the respect of family life guaranteed under article 23, paragraph 1, of the Covenant.

3.9 Finally, the author underlines that her husband and her son were prevented from exercising their right to challenge the legality of their detention and the alleged violations of articles 6 (para. 1), 7, 9, 10 (para. 1), 16 and 17 of the Covenant, in violation of article 2 (para. 3) of the Covenant. The author and her family, for their part, have used all avenues available to them to find out what happened to the two disappeared persons, but the case was never pursued by the State party. The author considers that the absence of any investigation and the lack of due diligence by the State party in respect of the allegations of illegal detention and enforced disappearance also constitute a violation of article 2, paragraph 3, in respect of herself and her family.

3.10 The author asserts that all domestic remedies have proved unavailable, futile or ineffective and that the conditions of article 5, paragraph 2, subparagraph (b), of the Optional Protocol have therefore been met. After many unsuccessful informal approaches to the security forces to obtain information on what had happened to her husband and her son, the author informed the judicial authorities several times of the disappearances and asked, in vain, for an investigation to be opened. Her official complaints were all dismissed.

3.11 Lastly, the author underlines that, since February 2006, the date of the promulgation of Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation, it has been prohibited to prosecute members of the Algerian defence and security forces. The author recalls that the Committee has declared that the Ordinance seems to promote impunity and infringe the right to an effective remedy.[4] The author maintains that she was thus unable to assert her right to an effective remedy.

State party's observations on admissibility

4.1 On 8 April 2010, the State party submitted written arguments contesting the admissibility of the communication. It is of the view that this communication, which incriminates public officials or other persons acting on behalf of public authorities in cases of enforced disappearance during the period in question — from 1993 to 1998 — should be examined taking "a comprehensive approach" and should be declared inadmissible. Such communications should be placed in the broader context of the sociopolitical situation and security conditions that prevailed in the country during a period when the Government was struggling to combat a form of terrorism aimed at provoking the "collapse of the Republican State". In this context, and in accordance with the Constitution (arts. 87 and 91), precautionary measures were implemented, and the Algerian Government informed the Secretariat of the United Nations of its declaration of a state of emergency, in accordance with article 4, paragraph 3, of the Covenant.

4.2 The State party emphasizes that, in some areas characterized by the proliferation of informal settlements, civilians had trouble distinguishing the actions of terrorist groups from those of the security forces, to which they often attributed enforced disappearances. According to the State party, a large number of enforced disappearances must be seen in this perspective. The concept of disappearance in Algeria during the period in question actually covers six distinct scenarios. The first scenario 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 asked their families to report that they had been arrested by the security services, as a way of "covering their tracks" and avoiding "harassment" by the police. The second scenario concerns persons who were reported missing after their arrest by the security

[4] The author refers to the Committee's concluding observations on the third periodic report of Algeria, adopted on 1 November 2007 (CCPR/C/DZA/CO/3), para. 7.

services but who took advantage of their 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 whose families had reported them as missing, whereas in fact they had abandoned them, 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.

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, taking account of all persons who had disappeared in the context of the "national tragedy", and under which 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 disappearances have been reported, 6,774 cases examined, 5,704 approved for compensation and 934 rejected, and 136 are still pending. A total of 371,459,390 Algerian dinars has been paid out as compensation to the victims concerned. In addition, a total of 1,320,824,683 dinars has been paid out in the form of monthly pensions.

4.4 The State party considers that the author has not exhausted all domestic remedies. 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 competent courts of justice. The State party observes that, as may be seen from the author's complaint, she has 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 has not, strictly speaking, initiated legal action and seen it through to its conclusion by availing herself of all available remedies of appeal and cassation. 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 an investigating judge. In the Algerian legal system, it is the public prosecutor who receives complaints and who institutes criminal proceedings if these are warranted. Nevertheless, in order to protect the rights of victims and their beneficiaries, the Code of Criminal Procedure authorizes the latter to sue for damages by filing a complaint with the investigating judge. In this case, it is the victim, not the prosecutor, who institutes 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, was not utilized, despite the fact that it would have enabled the author to institute criminal proceedings and compel the investigating judge to launch an investigation, 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 author believed she did not need to bring the matter before the relevant courts, in view of the latter's likely position and findings regarding the application of the Ordinance. However, the author cannot invoke this Ordinance and its implementing legislation as a pretext for failing to institute the legal

proceedings available to her. 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.[5]

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 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 introduces 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, individual or joint, brought against 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 a fund 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 how similar the facts and situations described by the author are to those described by the authors of the previous communications concerned by the memorandum of 3 March 2009 and to take account of the sociopolitical and security context in which they occurred. It also asks the Committee to find that the author 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 that are 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 author seek an alternative remedy.

Additional observations by the State party on admissibility

5.1 On 8 April 2010, the State party also transmitted a further memorandum, dated November 2009, to the Committee in which it questioned the intention of the series of individual communications submitted to the Committee since the beginning of 2009, which, it considered, constituted rather an abuse of procedure aimed at bringing before the Committee a broad historical issue whose causes and circumstances lie outside the scope of the Committee. The State party observes that all these "individual" communications dwell

[5] The State party cites, in particular, communications Nos. 210/1986 and 225/1987, *Pratt and Morgan v. Jamaica*, Views adopted on 6 April 1989.

on the general context in which the disappearances occurred. The State party notes that the complaints focus solely on the actions of the security forces, without ever mentioning those of all the armed groups that used criminal techniques of concealment in order to incriminate the armed forces.

5.2 The State party indicates that it will not address the merits of the aforementioned communications until the issue of their admissibility has been settled. It adds that all judicial or quasi-judicial bodies have the obligation to deal with preliminary questions before considering the merits. It considers that the decision in the case in point to consider the 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 author did not submit any complaints or requests for information through channels that would have allowed consideration of the case by the Algerian judicial authorities.

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 author 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 author to submit her allegations to examination has 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 to 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 proved to have taken place in any other context are subject to investigation by the appropriate courts.

5.4 On 6 October 2010, the State party, submitting a new copy of the "background memorandum on the inadmissibility of individual communications submitted to the Human Rights Committee in connection with the implementation of the Charter for Peace and National Reconciliation", reiterated that it contested the admissibility of the communication.

Authors' comments on the State party's observations

6.1 On 5 January 2011, the author submitted comments on the State party's observations on admissibility and provided additional arguments on the merits.

6.2 The author points out that the State party has recognized the competence of the Committee to consider individual communications. This competence is of a general nature and its exercise by the Committee is not subject to the discretion of the State party. In particular, it is not for the State party to determine whether it is appropriate for the Committee to take up a specific case. That is for the Committee to decide when it considers the communication. The author considers that the adoption by the State party of a comprehensive domestic settlement mechanism cannot be applied in respect of the Human Rights Committee or constitute grounds for declaring the communication inadmissible. In

the present case, the legislative measures adopted amount to a violation of the rights enshrined in the Covenant, as the Committee has previously observed.[6]

6.3 The author recalls that the declaration of a state of emergency by Algeria on 9 February 1992 does not affect the right of persons to submit individual communications to the Committee. Article 4 of the Covenant allows for derogations from certain provisions of the Covenant during states of emergency but does not affect the exercise of rights under the Optional Protocol.

6.4 The author again refers to the State party's argument that the requirement to exhaust domestic remedies calls for the author to institute criminal proceedings by filing a complaint with the investigating judge and suing for damages, in accordance with articles 72 and following of the Code of Criminal Procedure. She recalls that this procedure, if the complaint is not to be declared inadmissible, is subject to the payment of a surety or "procedural fee", the amount of which is set arbitrarily by the investigating judge. She considers that the procedure represents a financial deterrent to the persons concerned who, furthermore, have no guarantee that it will actually result in proceedings being initiated. The author considers that, given the serious nature of the alleged offences, it was the responsibility of the competent authorities to take up the case. The author refers to the Committee's jurisprudence in this respect.[7]

6.5 The author reiterates moreover that, following the arrests of her husband and her son, she tried to find out from the security forces what had happened to them, to no avail. She also informed the prosecution services of the courts of Taher and Jijel. At no time did any of these authorities ever conduct an investigation into the alleged violations. Consequently, the author and her family cannot be reproached for not having exhausted all domestic remedies since it was the State party that failed to carry out the necessary investigations incumbent upon it.

6.6 Furthermore, the author notes that the State party seems to contend that the ban, pursuant to article 45 of Ordinance No. 06-01, on bringing proceedings, individual or joint, against members of the State defence and security forces is not absolute, and that the position of the national courts regarding the way in which article 45 would be applied may not be prejudged. The author recalls that the complaint that she filed officially on 25 June 2007 requesting an investigation into the disappearance of her husband and her son was discontinued by the public prosecutor on 17 January 2009, the grounds for the decision being the application of article 45 of Ordinance No. 06-01. The author therefore concludes that Ordinance No. 06-01 has indeed put an end to any possibility of bringing civil or criminal proceedings for crimes committed by the security forces during the civil war, and that the Algerian courts are obliged to declare any such claim inadmissible.

6.7 With regard to the merits, the author notes that the State party appears to dispute the very fact that massive and systematic enforced disappearances occurred in Algeria, since it paints a set of scenarios involving disappearance, all of which exclude the responsibility of agents of the State. In this context, the author considers it paradoxical that the State party has paid compensation to 5,704 beneficiaries of victims out of the 8,023 persons registered as having disappeared. The State party addresses the issue of enforced disappearances

[6] The author refers to the concluding observations of the Human Rights Committee concerning the third periodic report of Algeria (CCPR/C/DZA/CO/3), adopted on 1 November 2007, paras. 7, 8 and 13. The author also refers to communication No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 11, and to the concluding observations of the Committee against Torture concerning the third periodic report of Algeria, adopted on 13 May 2008 (CAT/C/DZA/CO/3), paras. 11, 13 and 17. Lastly, the author refers to general comment No. 29 (2001) on derogations from the Covenant during states of emergency.

[7] Communication No. 1588/2007, *Benaziza v. Algeria*, Views adopted on 26 July 2010, para. 8.3.

solely from a financial point of view, without trying to identify the perpetrators, who are, on the contrary, presented as "those responsible for saving the country". Furthermore, the State party has never initiated a comprehensive investigation into the cases of enforced disappearance, as has been recommended several times by different international bodies.[8]

6.8 With regard to the State party's argument that it is entitled to request that the admissibility of the communication be considered separately from the merits, the author refers to rule 97, paragraph 2, of the Committee's rules of procedure, which permits the working group or the special rapporteur to decide, because of the exceptional nature of the case, to request a written reply that relates only to the question of admissibility. Consequently, it is not for the author of the communication or the State party to make such assessments; that is the sole prerogative of the working group or the special rapporteur. The author considers that the State party was required to submit explanations or observations concerning both the admissibility and the merits of the communication.

6.9 The author also notes that, since the State party has not submitted observations on the merits, the Committee must base its decision on the existing information and that the author's allegations must be taken fully into consideration.[9] The author notes that the State party's refusal to reply to her allegations and to deal with the present communication in its own right is motivated by the involvement of the security services in the disappearance of her husband and her son. The author maintains that, given that the State party has not refuted the alleged facts, these must be considered as proven.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 The Committee recalls that the joinder of admissibility and merits, in conformity with the decision by the Special Rapporteur (see para. 1.2), does not preclude the two matters being considered separately by the Committee. 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 has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes that, in the State party's view, the author and her family have not exhausted domestic remedies, since they did not bring the matter before the investigating judge and sue for damages in criminal proceedings under articles 72 and 73 of the Code of Criminal Procedure. The Committee also notes that, according to the State party, the author has written letters to political and administrative authorities and has petitioned representatives of the prosecution service (public prosecutors), but has not, strictly speaking, initiated legal action and seen it through to its conclusion by availing herself of all available remedies of appeal and cassation. The Committee also takes note of the author's argument that several complaints were lodged with the public prosecutors of the courts of Taher and of Jijel, and that letters were sent to the Minister of Justice, as well as to the President of the Republic. At no time did any of these authorities conduct an investigation into the alleged violations. Lastly, the Committee notes that, according to the

[8] The Human Rights Committee and the Committee against Torture.

[9] The author quotes the decisions of the Committee against Torture in communication No. 207/2002, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 24 November 2004, para. 5.3; and communication No. 1640/2007 of the Human Rights Committee, *El Abani v. Libyan Arab Jamahiriya*, Views adopted on 26 July 2010, para. 4.

author, article 46 of Ordinance No. 06-01 penalizes any person who files a complaint pertaining to actions covered by article 45 thereof.

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, particularly enforced disappearances or violations of the right to life, brought to the attention of its authorities, but also to prosecute, try and punish anyone held to be responsible for such violations.[10] Although the family of Tahar and Bachir Bourefis repeatedly contacted the competent authorities concerning their disappearance, the State party failed to conduct a thorough and effective investigation into the events, despite the fact that serious allegations of enforced disappearance were involved. The State party has also failed to provide sufficient information indicating that an effective remedy is indeed available while Ordinance No. 06-01 of 27 February 2006 continues to be applied, notwithstanding the Committee's recommendations that it should be brought into line with the Covenant.[11] 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 charges that should be brought by the public prosecutor.[12] Moreover, given the vague wording of articles 45 and 46 of the Ordinance, and in the absence of satisfactory information from the State party about their interpretation and actual enforcement, the author's fears about the effectiveness of filing a complaint are reasonable. The Committee therefore concludes that article 5, paragraph 2 (b), of the Optional Protocol is not an obstacle to the admissibility of the communication.

7.5 The Committee considers that, for a communication to be deemed admissible, the author must have exhausted only the remedies relevant to the alleged violation; in the present case, remedies with respect to enforced disappearance.

7.6 The Committee considers that the author has sufficiently substantiated her allegations insofar as they raise issues under articles 6 (para. 1), 7, 9, 10 (para. 1), 16, 17 and 23 (para. 1) and 2 (para. 3) of the Covenant, and therefore proceeds to consider the communication on the merits.

Consideration of the merits

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

8.2 The State party submitted collective and general observations in response to serious allegations by the author and has been content to argue that communications incriminating public officials, or persons acting on behalf of public authorities, in cases of enforced disappearances between 1993 and 1998 should be considered within the broader context of the sociopolitical situation and security conditions that prevailed in the country during a period when the Government was struggling to combat terrorism. The Committee recalls its jurisprudence,[13] 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

[10] See, inter alia, communications No. 1779/2008, *Mezine v. Algeria*, Views adopted on 25 October 2012, para. 7.4; No. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 7.4; No. 1905/2009, *Khirani v. Algeria*, Views adopted on 26 March 2012, para. 6.4; and No. 1791/2008, *Boudjemai v. Algeria*, Views adopted on 22 March 2013, para. 7.4.

[11] CCPR/C/DZA/CO/3, paras. 7, 8 and 13.

[12] Communications No. 1779/2008, *Mezine v. Algeria*, para. 7.4; No. 1588/2007, *Benaziza v. Algeria*, para. 8.3; No. 1781/2008, *Berzig v. Algeria*, para. 7.4; No. 1905/2009, *Khirani v. Algeria*, para. 6.4; and No. 1791/2008, *Boudjemai v. Algeria*, para. 7.4.

[13] See, inter alia, communications No. 1779/2008, *Mezine v. Algeria*, para. 8.2; No. 1781/2008, *Berzig v. Algeria*, para. 8.2; and No. 1791/2008, *Boudjemai v. Algeria*, para. 8.2.

Covenant or who have submitted or may submit communications to the Committee. The Covenant demands that the State party concern itself with the fate of every individual and treat every individual with respect for the inherent dignity of the human person. Ordinance No. 06-01, without the amendments recommended by the Committee, is in this case a contributing factor in 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 claims concerning the merits of the case and recalls its jurisprudence,[14] according to which the burden of proof should not be 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 has the necessary information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with the information available to it.[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 they have been sufficiently substantiated.

8.4 The Committee notes that the author asserts that her husband, Tahar Bourefis, was arrested by soldiers in her presence on 23 August 1996 at his residence, and that her son, Bachir Bourefis, was arrested in the presence of his wife on 22 December 1996, after being summoned to the local gendarmerie. It also notes that, according to the author, such disappearances entail a high risk of violation of the right to life of the victims and that, considering their prolonged absence as well as the circumstances and context of their arrest, it seems probable that Tahar and Bachir Bourefis died in detention. The Committee notes that the State party has produced no evidence refuting the author's allegation. The Committee recalls that, in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate of the disappeared person, effectively removes the person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable. 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 lives of Tahar and Bachir Bourefis. The Committee therefore concludes that the State party has failed in its duty to protect the lives of Tahar Bourefis and Bachir Bourefis, in violation of article 6, paragraph 1, of the Covenant.[16]

8.5 The Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, which recommends that States parties should make provisions against incommunicado detention. It notes in the case in question that Tahar Bourefis was arrested by soldiers on 23 August 1996 and Bachir Bourefis was arrested by gendarmes on 22 December 1996, and that their fate is still unknown. In the absence of a satisfactory explanation from the State party, the Committee considers that these disappearances

[14] See, inter alia, communications No. 1779/2008, *Mezine v. Algeria*, para. 8.3; No. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, para. 7.4; No. 1781/2008, *Berzig v. Algeria*, para. 8.3; and No. 1791/2008, *Boudjemai v. Algeria*, para. 8.3.

[15] See communications No. 1779/2008, *Mezine v. Algeria*, para. 8.3; No. 1297/2004, *Medjnoune v. Algeria*, Views adopted 14 July 2006, para. 8.3; and No. 1791/2008, *Boudjemai v. Algeria*, para. 8.3.

[16] See communication No. 1779/2008, *Mezine v. Algeria*, para. 8.4; and No. 1791/2008, *Boudjemai v. Algeria*, para. 8.4.

constitute a violation of article 7 of the Covenant with regard to Tahar and Bachir Bourefis.[17]

8.6 The Committee also takes note of the anguish and distress caused to the author and her children by the disappearance of Tahar and Bachir Bourefis. It considers that the facts before it disclose a violation with respect to her of article 7 of the Covenant read alone and in conjunction with article 2, paragraph 3.[18]

8.7 With regard to the alleged violation of article 9, the Committee notes the author's claim that Tahar Bourefis was arrested by soldiers on 23 August 1996 and Bachir Bourefis was arrested by gendarmes on 22 December 1996, that they were not charged or brought before a judicial authority, which would have enabled them to challenge the lawfulness of their detention, and that no official information was given to their family regarding their whereabouts or their fate, despite the fact that the authorities certified that their disappearances had occurred "in the context of the national tragedy". In the absence of satisfactory explanations from the State party, the Committee finds a violation of article 9 with regard to Tahar and Bachir Bourefis.[19]

8.8 Regarding the complaint under article 10, paragraph 1, the Committee reiterates that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated with humanity and respect for their dignity. In view of the incommunicado detention of Tahar and Bachir Bourefis and in the absence of information provided by the State party in that regard, the Committee finds a violation of article 10, paragraph 1, of the Covenant.[20]

8.9 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 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.[21] In the present case, the Committee notes that the State party has not furnished any explanation concerning the fate or whereabouts of Tahar or Bachir Bourefis, despite the multiple requests addressed by the author to the State party. The Committee concludes that the enforced disappearance of Tahar and Bachir Bourefis nearly 17 years ago denied them the protection of the law and deprived them of their right to recognition as persons before the law, in violation of article 16 of the Covenant.

[17] See communications No. 1779/2008, *Mezine v. Algeria*, para. 8.5; No. 1905/2009, *Khirani v. Algeria*, para. 7.5; No. 1781/2008, *Berzig v. Algeria*, para. 8.5; and No. 1295/2004, *El Alwani v. Libyan Arab Jamahiriya*, Views adopted on 11 July 2007, para. 6.5.

[18] See communications No. 1779/2008, *Mezine v. Algeria*, para. 8.6; No. 1905/2009, *Khirani v. Algeria*, para. 7.6; No. 1781/2008, *Berzig v. Algeria*, para. 8.6; No. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, para. 7.5; and No. 1422/2005, *El Hassy v. Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 6.11.

[19] See, inter alia, communications No. 1779/2008, *Mezine v. Algeria*, para. 8.7; No. 1905/2009, *Khirani v. Algeria*, para. 7.7; and No. 1781/2008, *Berzig v. Algeria*, para. 8.7.

[20] See general comment No. 21 (1992) on humane treatment of persons deprived of their liberty, para. 3; and communication No. 1779/2008, *Mezine v. Algeria*, para. 8.8; communication No. 1780/2008, *Zarzi v. Algeria*, Views adopted on 22 March 2011, para. 7.8; and communication No. 1134/2002, *Gorji-Dinka v. Cameroon*, Views adopted on 17 March 2005, para. 5.2.

[21] See communications No. 1779/2008, *Mezine v. Algeria*, para. 8.9; No. 1905/2009, *Khirani v. Algeria*, para. 7.9; No. 1781/2008, *Berzig v. Algeria*, para. 8.9; No. 1780/2008, *Zarzi v. Algeria*, para. 7.9; No. 1588/2007, *Benaziza v. Algeria*, para. 9.8; No. 1327/2004, *Atamna v. Algeria*, para. 7.8; and No. 1495/2006, *Madoui v. Algeria*, Views adopted on 28 October 2008, para. 7.7.

8.10 With regard to the alleged violation of article 17, the Committee notes that the State party did not provide any justification for or clarification of the entry of soldiers into the family home of Tahar Bourefis in the middle of the night without a warrant. The Committee concludes that the entry of officials into the family home of Tahar Bourefis in such circumstances constitutes unlawful interference with their home, in violation of article 17 of the Covenant.[22]

8.11 In light of the above, the Committee will not consider the claims based on the violation of article 23, paragraph 1, of the Covenant separately.

8.12 The author invokes article 2, paragraph 3, of the Covenant, which imposes on States parties the obligation to ensure an effective remedy for all persons whose Covenant rights 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, which states that 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 present case, although the victims' family repeatedly contacted the competent authorities, including the prosecutor of the courts of Taher and Jijel, regarding the disappearances of Tahar and Bachir Bourefis, all their efforts were in vain, and the State party failed to conduct a thorough and effective investigation into the disappearance of the author's husband and son. Furthermore, the absence of the legal right to undertake judicial proceedings since the promulgation of Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation continues to deprive Tahar and Bachir Bourefis, the author and her family of access to an effective remedy, since the Ordinance prohibits the initiation of legal proceedings to shed light on the most serious crimes, such as enforced disappearance.[23] The Committee concludes that the facts before it reveal a violation of article 2 (para. 3), read in conjunction with articles 6 (para. 1), 7, 9, 10 (para. 1) and 16 of the Covenant with regard to Tahar and Bachir Bourefis, of article 2 (para. 3) read in conjunction with article 17 of the Covenant with regard to Tahar Bourefis, and of article 2 (para. 3) read in conjunction with articles 7 and 17 of the Covenant with regard to the author.

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 6 (para. 1), 7, 9, 10 (para. 1), 16 and 17, read alone and in conjunction with article 2 (para. 3) of the Covenant with regard to Tahar Bourefis. It also finds a violation by the State party of articles 6 (para. 1), 7, 9, 10 (para. 1) and 16 of the Covenant, read alone and in conjunction with article 2 (para. 3), of the Covenant with regard to Bachir Bourefis. Lastly, it finds a violation of articles 7 and 17 of the Covenant, read alone and in conjunction with article 2 (para. 3) of the Covenant with regard to the author.

10. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author and her family with an effective remedy, including by: (a) conducting a thorough and effective investigation into the disappearance of Tahar and Bachir Bourefis; (b) providing the author and her family with detailed information about the results of its investigation; (c) releasing them immediately if they are still being detained incommunicado; (d) in the event that Tahar and Bachir Bourefis are deceased, handing over their remains to their family; (e) prosecuting, trying and punishing those responsible for the violations committed; and (f) providing adequate compensation to the author and her family for the violations suffered and to Tahar and Bachir Bourefis, if they

[22] Communication No. 1779/2008, *Mezine v. Algeria*, para. 8.10.

[23] CCPR/C/DZA/CO/3, para. 7.

are 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 enforced disappearances. The State party is also under an obligation 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 to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.