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Communication No. 1931/2010

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

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| <i>Submitted by:</i> | Messaouda Bouzeriba (represented by Mr. Rachid Mesli, Alkarama for Human Rights) |
| <i>Alleged victims:</i> | Lakhdar Bouzenia (son of the author) and the author herself |
| <i>State party:</i> | Algeria |
| <i>Date of communication:</i> | 8 January 2010 (initial submission) |
| <i>Document reference:</i> | Special Rapporteur's rule 97 decision, transmitted to the State party on 18 March 2010 (not issued in document form) |
| <i>Date of decision:</i> | 23 July 2014 |
| <i>Subject matter:</i> | Enforced disappearance |
| <i>Substantive issues:</i> | Right to life; prohibition of torture and cruel, inhuman or degrading 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 right to an effective remedy; protection of the family |
| <i>Procedural issue:</i> | Exhaustion of domestic remedies |
| <i>Articles of the Covenant:</i> | 2 (para. 3), 6 (para. 1), 7, 9, 10 (para. 1), 16 and 23 (para. 1) |
| <i>Article of the Optional Protocol:</i> | 5 (para. 2 (b)) |



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. 1931/2010*

Submitted by: Messaouda Bouzeriba (represented by Mr. Rachid Mesli, Alkarama for Human Rights)

Alleged victims: Lakhdar Bouzenia (son of the author) and the author herself

State party: Algeria

Date of communication: 8 January 2010 (initial submission)

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

Meeting on 23 July 2014,

Having concluded its consideration of communication No. 1931/2010, submitted by Messaouda Bouzeriba 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, dated 8 January 2010, is Messaouda Bouzeriba, born on 8 July 1930 in Sidi Abdelaziz, Jijel *wilaya*, Algeria. She claims that her son, Lakhdar Bouzenia, born on 14 January 1955 in Sidi Abdelaziz, Jijel *wilaya*, a married father of five residing in El Kennar, has been the victim of an enforced disappearance attributable to the State party, in violation of articles 2 (para. 3), 6 (para. 1), 7, 9, 10 (para. 1), 16 and 23 (para. 1) of the Covenant. The author further claims that she herself, her husband, her son, his wife and his five children have been the victims of violations of articles 2 (para. 3), 7 and 23 (para. 1) of the Covenant. The author is represented by Mr. Rachid Mesli of the Alkarama for Human Rights organization.

* The following members of the Committee took part in the consideration of the communication: Mr. Yadh Ben Achour, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Mr. Dheerujall Seetulsingh, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval and Mr. 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 18 March 2010, the Committee, through its Special Rapporteur on new communications and interim measures, decided not to grant the protection measures sought by the author, who requested that the State party be asked to refrain from taking any criminal or other measure intended to punish or intimidate her, or any member of her family, in connection with the present communication. On 27 September 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 Lakhdar Bouzenia was a teacher of Arabic literature at the high school in Sidi Abdelaziz. A political figure in the Front Islamique du Salut (Islamic Salvation Front) (FIS), he had been elected on the FIS list for the Chefka constituency in the first round of the legislative elections, held on 26 December 1991. On 24 May 1993, he was arrested at a roadblock set up by the National Gendarmerie in the town of El Ancer, in Jijel *wilaya*. The author notes that another of her sons, Hussein Bouzenia, who had been elected president of the communal people's assembly (mayor) of the town of Chefka on the FIS list, was also arrested during this period, as were dozens of other FIS militants.

2.2 Following his arrest, Lakhdar Bouzenia was held incommunicado at the headquarters of the Jijel military sector for approximately three weeks, before being transferred to the Centre territorial de recherches et d'investigations (Territorial Centre for Research and Investigation) (CTRI) in Constantine, run by the Département du renseignement et de la sécurité (Intelligence and Security Department) (DRS) of the People's National Army. He was then detained by several brigades of the National Gendarmerie in turn, including the El Ancer, El Milia, Settara and El Aouana brigades.

2.3 He was not seen again until one month after his arrest, when he appeared, without a lawyer, before the investigating judge at El Milia Court; during this court appearance, he had difficulty remaining standing. He was scarcely recognizable owing to the torture inflicted during his detention by DRS and the National Gendarmerie, which included crucifixion (there were visible wounds on his hands and feet) and sexual abuse. Despite these visible signs of ill-treatment, the judge refused to have him examined by a doctor. During the hearing, he was charged with "formation and membership of a terrorist organization", "breach of State security", "dissemination of seditious publications" and other similar offences. No evidence was entered in the case file.

2.4 Following his appearance before the investigating judge, Lakhdar Bouzenia was transferred to the Jijel detention centre, where he was held in solitary confinement until 27 October 1993 and also endured ill-treatment and acts of torture. While he was detained, his family was able to visit him several times. During one of these visits, on 8 August 1993, one of his brothers observed signs of the torture to which Lakhdar Bouzenia had been subjected. His brother Hussein Bouzenia, who had been arrested during the same period and held in the same detention centre in Jijel until his transfer to another centre on 27 October 1993, learned that his brother had reportedly been taken from the prison on several occasions to be interrogated by DRS agents in their offices and that he had probably been tortured there.

2.5 Lakhdar Bouzenia was to be transferred to Constantine prison on 27 October 1993 to await his trial, which was scheduled for 17 November 1993. The prison van, which was escorted by gendarmerie vehicles and was carrying only Lakhdar Bouzenia, left the Jijel detention centre at around 11 a.m. but never arrived at its destination. The administration of Constantine prison denied having taken custody of, or having admitted, Lakhdar Bouzenia. His family fears that he was arbitrarily executed during the transfer. On 31 October 1993, the victim's family learned through the press that 11 notorious terrorists, including one Lakhdar Bouzenia, had been eliminated in Taskift on Wednesday, 27 October 1993, by the

Algerian security forces. It is precisely on the road linking Jijel and Constantine that the town of Taskift is located. On 17 November 1993, the trial of the victim and his brother, Hussein Bouzenia, began as scheduled. After a moment of confusion due to the absence of Lakhdar Bouzenia, who was to have appeared as a detained defendant, the judge announced the discontinuation of the criminal proceedings against him on account of his death.

2.6 The family took steps to learn the fate of the victim from the date of his arrest. The author recalls that, until 1998, the issue of enforced disappearance was not acknowledged by the Algerian authorities, so that many families elected not to lodge complaints for fear of reprisals. In the case of Lakhdar Bouzenia, his family reported his disappearance to the prosecutor at Jijel Court as early as November 1993. No action was taken in response to this report, and the family's oral complaints were never registered by the prosecutor's office. Likewise, the author attempted on several occasions to lodge a complaint of disappearance with the El Kennar gendarmerie, but the officers refused to register the complaint. The author even went to the El Milia hospital morgue and to the communal authorities to seek information about the identity of the Lakhdar Bouzenia whose death had been reported in the press and to obtain a death certificate. Those efforts remained in vain. In December 1996, the wife of the disappeared man petitioned the El Milia Public Prosecutor for the issue of a death certificate, so that she could confirm that her husband was dead, or, in the former instance, what the circumstances of his death were. The application for a judicial declaration of presumed death was registered with El Milia Court and a death certificate was issued after the appropriate procedure had taken place, but no copy of the court judgement was provided to the victim's wife, who still does not know whether the Lakhdar Bouzenia killed on 27 October 1993 was her husband or, if that is the case, what the circumstances of his death were.

2.7 On 24 February 2007, the author petitioned the Public Prosecutor at Taher Court for a document detailing the enquiries made into her son's disappearance. There was no response to this request until 17 November 2008, when the author was summoned by the Public Prosecutor for "a briefing with the complainant", the purpose of which was in fact to remind her that Lakhdar Bouzenia had been accused of terrorism and that numerous charges were pending against him. During this interview, the Public Prosecutor denied that Lakhdar Bouzenia had disappeared and maintained that he had been transferred to Constantine prison as planned on 27 October 1993. The Public Prosecutor refused to issue a certificate of disappearance or to open an investigation into the victim's disappearance, despite the author's requests to that effect. Lastly, the author notes that, since the promulgation of the Charter for Peace and National Reconciliation (Ordinance No. 06-01 of 27 February 2006), legal action can no longer be brought under domestic law.

The complaint

3.1 The author considers that her son's initial disappearance, following his arrest on 24 May 1993, and his second disappearance, on 27 October 1993, constitute violations by the State party of articles 2 (para. 3), 6 (para. 1), 7, 9, 10 (para. 1), 16 and 23 (para. 1) of the Covenant with regard to Lakhdar Bouzenia. The author further considers that she and her family are the victims of violations of articles 2 (para. 3), 7 and 23 (para. 1) of the Covenant.

3.2 The author alleges that her son is the victim of an enforced disappearance as defined by article 7, paragraph 2 (i), of the Rome Statute of the International Criminal Court (Rome Statute) and article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance. The disappearance followed his arrest on 24 May 1993 at a roadblock by gendarmerie officers acting in their official capacity. After an initial period of incommunicado detention lasting almost one month, during which he was tortured, her son again disappeared, while being transferred to Constantine prison, on 27 October 1993. The

author emphasizes that this transfer between two places of detention was arranged by the authorities of the State party, under their own responsibility.

3.3 The author notes the flagrant contradictions in the authorities' explanations concerning her son's fate. While the Public Prosecutor and the Jijel prison administration affirm that Lakhdar Bouzenia did not disappear during the transfer and that he did indeed arrive at Constantine prison on 27 October 1993, the administration of that facility maintains that he was never admitted to the prison. When Lakhdar Bouzenia's trial began on 17 November 1993, the judicial authorities discontinued the criminal proceedings against him on the ground of his presumed death on 27 October 1993, the date of the transfer. The author explains that, even in the absence of any physical evidence of her son's death, it is probable that he was executed during his transfer to Constantine prison while under the protection of the authorities of the State party. The State party therefore failed in its obligation to protect Lakhdar Bouzenia's right to life, in violation of article 6, paragraph 1, of the Covenant.

3.4 The author explains that incommunicado detention creates an environment conducive to acts of torture, since detainees are placed outside the protection of the law. She recalls the Committee's jurisprudence to the effect that incommunicado detention, which is indefinite and deprives detainees of contact with their families and with the outside world, causes such suffering that it constitutes a violation of article 7 in itself.¹ The incommunicado detention of Lakhdar Bouzenia for three weeks and the treatment to which he was subjected at that time (nailing of his hands and feet to a cross, sexual abuse) and during his subsequent incarceration at the Jijel detention centre undoubtedly constitute acts of torture, in violation of article 7 of the Covenant. The author claims that the anguish and distress she and her family have suffered all these years because of the uncertainty surrounding the disappeared man's fate also constitute a violation of article 7 of the Covenant, in their regard. The contradictory information provided by the authorities of the State party concerning the transfer of Lakhdar Bouzenia and the failure to clarify the identity of the terrorist who allegedly had the same name and died on the day of the transfer, have left the author in a state of total uncertainty as to her son's fate. His death has not been officially confirmed, the body has not been returned to the family, and no site has been identified from which it might be exhumed.

3.5 The author maintains that the arrest and detention of her son from 24 May until mid-June 1993 were arbitrary, in violation of article 9 of the Covenant. Lakhdar Bouzenia was arrested without a warrant at a gendarmerie roadblock on 24 May 1993. He was transferred to, and held incommunicado at, different locations for three weeks. There were no legal grounds for these various transfers or for his subsequent incarceration in the Jijel detention centre. The author considers that Lakhdar Bouzenia's arrest was very likely of a political nature, on account of his membership of FIS. The disappeared man was not informed of the reasons for his arrest or of the charges against him, and he was not brought before a judge before whom he could have challenged the legality of his detention. If it were to be assumed that Lakhdar Bouzenia is still alive and has been held incommunicado since 27 October 1993, his detention would likewise be arbitrary and without legal foundation, in violation of article 9 of the Covenant.

3.6 According to the author, the fact that her son was tortured during his detention implies that he was also the victim of a violation of his right to be treated with humanity and with respect for the inherent dignity of the human person while detained, in violation of article 10, paragraph 1, of the Covenant.

¹ Communications Nos. 449/1991, *Mojica v. the Dominican Republic*, Views adopted on 15 July 1994; and 540/1993, *Laureano Atachagua v. Peru*, Views adopted on 25 March 1996.

3.7 Lakhdar Bouzenia disappeared and was held incommunicado for one month following his arrest on 24 May 1993 and he again disappeared on 27 October 1993. He was thus placed outside the protection of the law and deprived of recognition as a person before the law, in violation of article 16 of the Covenant.² His appearance before the investigating judge at El Milia Court notwithstanding, he was denied the enjoyment of the rights recognized in the Covenant owing to his arbitrary arrest, incommunicado detention and subsequent enforced disappearance.

3.8 According to the author, the disappearance of her son deprived his family of a husband, father, son and brother and thus denied them their right to the protection of their family life by the State party. At the same time, it deprived the disappeared man of his right to a family life with his wife and children, also in violation of article 23, paragraph 1, of the Covenant.

3.9 The author emphasizes that her son was prevented from exercising his right to invoke a remedy against his detention and the alleged violations of articles 6 (para. 1), 7, 9, 10 (para. 1), 16 and 23 (para. 1) of the Covenant, in violation of article 2, paragraph 3. The author and her family, for their part, did all they could to find out what had become of the disappeared man but elicited no response from the State party, even though it was obliged to provide an effective remedy and to carry out a thorough and prompt investigation into the serious human rights violations alleged. According to the author, this inaction also constitutes a violation of article 2, paragraph 3, with regard to herself and her family.

3.10 The author maintains that domestic remedies have all proved to be unavailable or ineffective. Having made numerous informal requests to the security forces for information about her son's fate, but to no avail, the author reported his disappearance to the judicial authorities several times and petitioned the authorities, in vain, for the opening of an investigation, which never occurred. Her official complaints were all dismissed. The author therefore considers that the conditions for admissibility set out in article 5, paragraph 2 (b), of the Optional Protocol have been met.

3.11 The author concludes by stressing that, since February 2006, the date on which Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation was promulgated, the prosecution of members of the Algerian defence and security forces has been prohibited. The author recalls that the Committee declared that this Ordinance seemed to promote impunity and infringe the right to an effective remedy.³ The author maintains that she has thus been unable to exercise her right to an effective remedy.

State party's observations on admissibility

4.1 On 30 August 2010, the State party contested the admissibility of the communication, submitting a copy of the "background memorandum from the Government of Algeria 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". It is of the view that the present communication, which incriminates public officials or other persons acting on behalf of public authorities in a case of enforced disappearance during the period from 1993 to 1998, should be examined taking "a comprehensive approach" and should be declared inadmissible. The State party considers that such communications should be placed in the broader context of the sociopolitical situation and security conditions that prevailed in the country during a period when the Government was struggling to combat a form of terrorism aimed at provoking the

² The author cites communications Nos. 1328/2004, *Cheraitia v. Algeria*, Views adopted on 10 July 2007, para. 7.9; and 1327/2004, *Atamma v. Algeria*, Views adopted on 10 July 2007, para. 7.9.

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

“collapse of the Republican State”. It is in this context, and in conformity with the Constitution (arts. 87 and 91), that the Algerian Government implemented precautionary measures and 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 where there was a proliferation of informal settlements, civilians had trouble distinguishing the actions of terrorist groups from those of the law enforcement forces, to which they often attributed enforced disappearances. According to the State party, a large number of enforced disappearances must be considered 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 armed groups 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 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 reported missing who abandoned their families, and sometimes even left the country, to escape personal problems or family disputes. The fifth scenario concerns persons reported missing by their families 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, 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 371,459,390 Algerian dinars (DA) 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 the author has not exhausted all domestic remedies. It stresses the importance of distinguishing between simple formalities involving the political or administrative authorities, non-contentious remedies pursued through advisory or mediation bodies, and contentious 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 pursuing all available remedies. 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 warranted, institutes criminal proceedings. Nevertheless, in order to protect the rights of victims and their beneficiaries, the Code of Criminal Procedure authorizes the latter to sue for damages in

criminal proceedings 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, 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 possibility that any effective and available domestic remedies exist in Algeria to which the families of victims of disappearance could have recourse is ruled out by 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. On this basis, the author believed that she did not need to bring the matter before the relevant courts because of her presumption of their 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.⁴

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. This 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". Lastly, 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 a compensation fund for 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 The State party cites, in particular, communications Nos. 210/1986 and 225/1987, *Pratt and Morgan v. Jamaica*, Views adopted on 6 April 1989.

4.8 The State party asks the Committee to note how similar the facts and situations described by the author are to those set out in the earlier communications in respect of which the background memorandum was initially prepared. It also requests the Committee to take into account the sociopolitical and security context in which they occurred; 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.

State party's additional observations on admissibility

5.1 On 30 August 2010, the State party transmitted a further memorandum to the Committee, in addition to its main memorandum, in which it raises the question of whether the submission, over the previous years, of a series of individual communications against it 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 it is unaware. The State party observes 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 the cases in point 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 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 reiterates 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 reiterated that it contested the admissibility of the communication, submitting another copy of the "background memorandum from the

Government of Algeria 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”.

Author’s comments on the State party’s submission

6.1 On 15 April 2014, 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 recalls that the declaration by Algeria of a state of emergency on 9 February 1992 does not affect the right of persons to submit individual communications to the Committee. Article 4 of the Covenant allows only for derogations from certain provisions of the Covenant during states of emergency and does not therefore affect the exercise of rights under the Optional Protocol.

6.3 The author again refers to the State party’s argument that the requirement to exhaust domestic remedies calls on the author to institute criminal proceedings by filing a complaint with the investigating judge, in accordance with articles 72 et seq. of the Code of Criminal Procedure. She points out that, for this procedure, payment of a security or “procedural fee” is required, failing which the complaint will be declared inadmissible, and that the amount of the security or fee is set arbitrarily by the investigating judge. According to the author, this arrangement means that the procedure in question remains financially prohibitive for litigants, who, moreover, have no guarantee that it will actually lead to a prosecution. 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 also refers to the Committee’s jurisprudence on the matter.⁵

6.4 In addition, the author recalls that Ordinance No. 06-01 prohibits the institution of legal proceedings against individuals or groups who are members of any branch of the defence and security forces. The author concludes that the Ordinance does indeed preclude any possibility of bringing civil or criminal proceedings in connection with offences committed by the security forces during the civil war and that the Algerian courts are obliged to declare any such complaint inadmissible.

6.5 Lastly, the author notes that, since the State party has submitted no observations on the merits, the Committee must base its decision on existing information and that all the alleged facts should be taken as proven because the State party has not refuted them.

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. 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.

⁵ Communication No. 1588/2007, *Benaziza v. Algeria*, Views adopted on 26 July 2010, para. 8.3.

7.2 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.

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 consider the option 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 also notes that, according to the State party, the author has petitioned representatives of the prosecution service (the Public Prosecutor) but has not, strictly speaking, initiated legal action and seen it through to its conclusion by pursuing all available remedies. The Committee also takes note of the author's argument that she attempted, in vain, to lodge a complaint with the El Kennar gendarmerie and that she contacted the Public Prosecutor at Taher Court to seek information about her son. At no time did any of those authorities conduct an investigation into the alleged violations. Lastly, the Committee notes that, according to the 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 brought to the attention of its authorities, particularly an enforced disappearance or a violation of the right to life, but also to prosecute, try and punish anyone held to be responsible for such violations.⁶ Although Lakhdar Bouzenia's family contacted the competent authorities repeatedly concerning his disappearance, the State party failed to conduct a thorough and effective investigation into this serious allegation of enforced disappearance. The State party has also failed to provide sufficient evidence that an effective remedy is available, since Ordinance No. 06-01 continues to be applied despite the Committee's recommendations that it should be brought into line with the Covenant.⁷ 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.⁸ 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. 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 the author has sufficiently substantiated her claims insofar as they raise issues under articles 2 (para. 3), 6 (para. 1), 7, 9, 10 (para. 1), 16 and 23 (para. 1) of the Covenant and therefore proceeds to consider the communication on the merits.

Consideration on 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.

⁶ See, inter alia, communications Nos. 1779/2008, *Mezine v. Algeria*, Views adopted on 25 October 2012, para. 7.4; 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 7.4; 1905/2009, *Khirani v. Algeria*, Views adopted on 26 March 2012, para. 6.4; and 1791/2008, *Boudjemai v. Algeria*, Views adopted on 22 March 2013, para. 7.4.

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

⁸ Communications Nos. 1779/2008, *Mezine v. Algeria*, para. 7.4; 1588/2007, *Benaziza v. Algeria*, para. 8.3; 1781/2008, *Berzig v. Algeria*, para. 7.4; 1905/2009, *Khirani v. Algeria*, para. 6.4; and 1791/2008, *Boudjemai v. Algeria*, para. 7.4.

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 disappearance between 1993 and 1998 should be considered 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 terrorism. The Committee recalls its jurisprudence,⁹ 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. 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. Ordinance No. 06-01, without the amendments recommended by the Committee, is contributing to impunity in the present case 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,¹⁰ according to which the burden of proof should not rest solely on the author of a communication, especially given that the author and the State party do not always have the same degree of access to evidence and that often only the State party is in possession of the necessary information. 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.¹¹ 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 the author's claim that her son, Lakhdar Bouzenia, was arrested by gendarmerie officers on 24 May 1993 and disappeared a first time, before disappearing a second time on 27 October 1993 while being transferred to Constantine prison. It further notes that, according to the author, even though it is very probable that her son was the victim of an extrajudicial execution committed by the security forces during his transfer to Constantine prison, she has never obtained confirmation of that fact from the authorities, nor has she received any information about the circumstances of his death or the place where he is buried. In all likelihood, if Lakhdar Bouzenia was not executed during his transfer, he was forcibly disappeared. The Committee recalls that 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. The Committee notes that the State party has produced no evidence to clarify the fate of Lakhdar Bouzenia or to indicate that it has fulfilled its obligation to protect his life. Therefore the Committee concludes that the State party has failed in its duty to protect Lakhdar Bouzenia's life, in violation of article 6, paragraph 1, of the Covenant.¹²

8.5 The Committee notes that, according to the author, her son was brought before the investigating judge at El Milia Court in mid-June 1993 bearing visible signs of the torture

⁹ See, inter alia, communications Nos. 1779/2008, *Mezine v. Algeria*, para. 8.2; 1781/2008, *Berzig v. Algeria*, para. 8.2; and 1791/2008, *Boudjemai v. Algeria*, para. 8.2.

¹⁰ See, inter alia, communications Nos. 1779/2008, *Mezine v. Algeria*, para. 8.3; 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, Views adopted on 26 July 2010, para. 7.4; 1781/2008, *Berzig v. Algeria*, para. 8.3; and 1791/2008, *Boudjemai v. Algeria*, para. 8.3.

¹¹ See communications Nos. 1779/2008, *Mezine v. Algeria*, para. 8.3; 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.3; and 1791/2008, *Boudjemai v. Algeria*, para. 8.3.

¹² See communications Nos. 1779/2008, *Mezine v. Algeria*, para. 8.4; and 1791/2008, *Boudjemai v. Algeria*, para. 8.4.

he suffered during the month in which he was held incommunicado. In the absence of any information from the State party to refute this assertion, the Committee considers that the treatment inflicted on Lakhdar Bouzenia by the security forces of the State party when he was first detained incommunicado constitutes a violation of article 7 of the Covenant. Furthermore, 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 provision to ban incommunicado detention. It notes in the present case that Lakhdar Bouzenia disappeared for a second time on 27 October 1993. In the absence of a satisfactory explanation from the State party, the Committee considers that these facts also constitute a violation of article 7 of the Covenant with regard to Lakhdar Bouzenia.¹³

8.6 The Committee takes note of the anguish and distress caused to the author and her family by the disappearance of Lakhdar Bouzenia and the uncertainty as to his fate. It considers that the facts before it also disclose a violation of article 7 of the Covenant in their regard.¹⁴

8.7 With regard to the alleged violation of article 9, the Committee notes the author's claim that Lakhdar Bouzenia was arrested on 24 May 1993 by gendarmerie officers, without a warrant and probably for political reasons connected with his membership of FIS. He was not informed of the charges against him until he appeared before the investigating judge at El Milia Court, after being held incommunicado for one month, during which time he was unable to contest the legality of his detention. If he is still alive, the violation of article 9 of the Covenant has been ongoing since the criminal proceedings against him were officially discontinued by Constantine Court on 17 November 1993. In the absence of satisfactory explanations from the State party concerning any judicial guarantees afforded Lakhdar Bouzenia in the context of the judicial proceedings against him or subsequently, the Committee finds a violation of article 9 in his regard.¹⁵

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.¹⁶ In view of Lakhdar Bouzenia's incommunicado detention in the month following his arrest on 24 May 1993, the treatment inflicted on him during this period and the absence of information from the State party about what befell the author's son during his transfer from Jijel prison on 27 October 1993, the Committee finds a violation of article 10, paragraph 1, of the Covenant.

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

¹³ See communications Nos. 1779/2008, *Mezine v. Algeria*, para. 8.5; 1905/2009, *Khirani v. Algeria*, para. 7.5; 1781/2008, *Berzig v. Algeria*, para. 8.5; and 1295/2004, *El Alwani v. Libyan Arab Jamahiriya*, Views adopted on 11 July 2007, para. 6.5.

¹⁴ See communications Nos. 1779/2008, *Mezine v. Algeria*, para. 8.6; 1905/2009, *Khirani v. Algeria*, para. 7.6; 1781/2008, *Berzig v. Algeria*, para. 8.6; 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, para. 7.5; and 1422/2005, *El Hassy v. Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 6.11.

¹⁵ See, inter alia, communications Nos. 1779/2008, *Mezine v. Algeria*, para. 8.7; 1905/2009, *Khirani v. Algeria*, para. 7.7; and 1781/2008, *Berzig v. Algeria*, para. 8.7.

¹⁶ See general comment No. 21 (1992) on humane treatment of persons deprived of their liberty, para. 3; and communications Nos. 1779/2008, *Mezine v. Algeria*, para. 8.8; 1780/2008, *Zarzi v. Algeria*, Views adopted on 22 March 2011, para. 7.8; and 1134/2002, *Gorji-Dinka v. Cameroon*, Views adopted on 17 March 2005, para. 5.2.

him or her 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, have been systematically impeded.¹⁷ In the present case, the Committee notes that the State party has not furnished any explanation concerning the fate of Lakhdar Bouzenia, despite the multiple requests addressed by the author to the State party. The Committee concludes that Lakhdar Bouzenia's enforced disappearance more than 20 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.

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

8.11 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, in which it indicates in particular that the failure by a State party to investigate allegations of violations may in itself give rise to a separate breach of the Covenant. In the present case, despite the fact that Lakhdar Bouzenia appeared before the investigating judge at El Milia Court bearing visible signs of ill-treatment, no inquiry was initiated. Furthermore, his family reported his disappearance during his transfer to Constantine prison to the competent authorities, including the prosecutors at the courts in Taher and El Milia, but all their efforts led to nothing. The State party failed to conduct a thorough and effective investigation into the disappearance of the author's son. Furthermore, the absence of the legal right to undertake judicial proceedings since the promulgation of Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation continues to deprive Lakhdar Bouzenia, the author and her family of any 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 disappearances.¹⁸ 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 Lakhdar Bouzenia, and of article 2 (para. 3), read in conjunction with article 7 of the Covenant, with regard to the author and her family.

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) and 16 of the Covenant and 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 Lakhdar Bouzenia. It also finds a violation of articles 7 and 2 (para. 3), read in conjunction with article 7 of the Covenant, with regard to the author and her family.

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 Lakhdar Bouzenia; (b) providing the author and her family with detailed information about the results of its investigation; (c) releasing him immediately if he is still being detained

¹⁷ Communications Nos. 1779/2008, *Mezine v. Algeria*, para. 8.9; 1905/2009, *Khirani v. Algeria*, para. 7.9; 1781/2008, *Berzig v. Algeria*, para. 8.9; 1780/2008, *Zarzi v. Algeria*, para. 7.9; 1588/2007, *Benaziza v. Algeria*, para. 9.8; 1327/2004, *Atamma v. Algeria*, para. 7.8; and 1495/2006, *Madaoui v. Algeria*, Views adopted on 28 October 2008, para. 7.7.

¹⁸ CCPR/C/DZA/CO/3, para. 7.

incommunicado; (d) in the event that Lakhdar Bouzenia 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 author for the violations suffered and to Lakhdar Bouzenia, 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 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 was 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.
