



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2259/2013\*, \*\*

<i>Communication submitted by:</i>	Malika El Boathi (represented by counsel, Nassira Dutour of the Collectif des Familles de Disparu(e)s en Algérie)
<i>Alleged victims:</i>	The author and Brahim El Boathi (the author's son)
<i>State party:</i>	Algeria
<i>Date of communication:</i>	5 April 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 14 June 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	17 March 2017
<i>Subject matter:</i>	Enforced disappearance
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to an effective remedy; prohibition of torture, cruel, inhuman or degrading treatment or punishment; right to liberty and security of persons; respect for the inherent dignity of the human person; recognition as a person before the law
<i>Articles of the Covenant:</i>	2 (2) and (3), 6, 7, 9, 10 and 16

1. The author of the communication is Malika El Boathi, a national of Algeria. She claims that her son, Brahim El Boathi, born on 3 April 1965, of Algerian nationality, is the victim of an enforced disappearance attributable to the State party, in violation of articles 2 (2) and (3), 6, 7, 9, 10 and 16 of the Covenant. The author claims to be a victim of violations of articles 2 (2) and 7, read in conjunction with article 2 (3), of the Covenant. She

\* Adopted by the Committee at its 119th session (6-29 March 2017).

\*\* The following members of the Committee participated in the examination of the communication: Ms. Tania María Abdo Rocholl, Mr. Yadh Ben Achour, Ms. Ilze Brands Kehris, Ms. Sarah Cleveland, Mr. Ahmed Amin Fathalla, Mr. Olivier de Frouville, Mr. Christof Heyns, Mr. Yuji Iwasawa, Mr. Bamariam Koita, Ms. Marcia V.J. Kran, Mr. Duncan Laki Muhumuza, Ms. Photini Pazartzis, Mr. Mauro Politi, Mr. José Manuel Santos Pais, Mr. Yuval Shany and Ms. Margo Waterval.



is represented by counsel, Nassira Dutour of the Collectif des Familles de Disparu(e)s en Algérie.

#### **The facts as submitted by the author**

2.1 Brahim El Boathi, born on 3 April 1965, was married and the father of two children. He was employed as a soldier at the Bouzareah barracks. On 17 January 1994, he took a bus from the Place des Martyrs to go to work. He was arrested at a police checkpoint in the Climat de France neighbourhood, in Oued Koriche municipality, Bab el Oued district, Algiers *wilaya* (governorate). His family has not seen him since then.

2.2 On 19 January 1994, Malika El Boathi (the author) initiated what proved to be fruitless search procedures for her son in police stations near to the place where he disappeared. The author went to Baïnem court in Algiers and was received by the prosecutor, whom she told about her son's disappearance. The prosecutor called various police stations in Algiers *wilaya*. At Oued Koriche police station, the prosecutor spoke with an officer, A.Z., who confirmed that he himself had arrested Brahim El Boathi. On the advice of the prosecutor and in possession of a letter signed by him, the author went to Oued Koriche police station, where she met with A.Z. When he discovered who she was, he showed signs of becoming violent. He calmed down when he read the letter from the prosecutor, acknowledged that he had arrested Brahim El Boathi and said that he had killed him. A.Z. refused to provide the author with a death certificate, saying that it was impossible to do so.

2.3 On the advice of the Baïnem court prosecutor, the author returned to Oued Koriche police station to see A.Z. and asked to see photographs of her dead son. A.Z. told the author that the photographs were at the central police station and asked her to return the next day. The following day, when she went back to the police station in Oued Koriche, A.Z. showed her 26 photos of deceased persons, all bearing signs of torture, and ordered her to identify her son. The author did not recognize her son on any of the photos. Fifteen days later, A.Z. summoned the author to give her the number of her son's grave in El Alia cemetery; she built a tomb for her son there. A few days later, A.Z. called the author again to inform her that the person buried in the grave specified was not in fact her son.

2.4 The author appealed to the Hammamet court prosecutor, who summoned her to tell her that her son's case was settled. He gave no further details and said that the police would come to explain the events surrounding her son's death. Having heard nothing from the police, the author returned to Oued Koriche police station with her grandson. Hooded police officers there insulted her and she fled.

2.5 On 2 May 2000, Abbane Ramdane court in Algiers refused to issue a judgment confirming her son's disappearance, suggesting an implicit recognition on the part of the authorities that Brahim El Boathi was still alive. However, both before and after the trial, she continued to receive contradictory information as to whether her son was alive or dead. In 1999, the author was summoned to the Fifth district police station, where the commissioner said that Brahim El Boathi was not dead, but refused to tell her where he was being held. On 5 October 2000, the lieutenant of the Bab el Oued gendarmerie admitted that Brahim el Boathi had disappeared in unclear circumstances. Brahim El Boathi's wife agreed to receive compensation. Since then, both the author and Brahim El Boathi's wife have made many attempts, both non-judicial and judicial, to obtain information on the circumstances surrounding his disappearance. His wife has been subjected to intimidation and ill-treatment on numerous occasions by the police and military security officers in her efforts to find her husband.

2.6 In terms of non-judicial procedures, his wife has: (a) issued a wanted person notice (2000); (b) submitted a complaint to the National Human Rights Observatory (2001); and (c) sent a letter to the president of the SOS Disparu(e)s association (2002). The author has sent: (a) a complaint to the Minister of Justice, copied to the President of the French Republic prior to his visit to Algeria (2002); (b) a letter to the head of Government (2003); (c) a request to the president of the National Advisory Commission for the Promotion and Protection of Human Rights to dispute the results of investigations carried out by that body (2003); (d) a complaint to the president of the same institution (2004); (e) a complaint to

the President of the Republic, the head of Government and the Ministers of Justice and the Interior (2006); (f) a request to the head of the El Achour gendarmerie brigade (2007); (g) a complaint to the President of the Republic, the Ministers of Justice and the Interior, the chief of Blida *wilaya* first military region and the human rights adviser to the President of the Republic (2007); (h) a request for action to the head of the delegation of the International Committee of the Red Cross (2007); and (i) another request to the Minister of Justice and the President of the Republic (2009). Some of the authorities acknowledged receipt of the complaints, but merely directed the author to the courts or to procedures for application for compensation. The National Advisory Commission for the Promotion and Protection of Human Rights carried out an inquiry, the results of which were categorically refuted by the author.

2.7 In terms of judicial proceedings, the El Boathi family requested that an investigation be initiated immediately after Brahim El Boathi's disappearance; his wife was summoned by the Bab El Oued police on 20 February 1995 and 26 September 1999. Following the decision on appeal by Bab El Oued court and the Algiers Indictments Chamber of 2 May 2000 to dismiss the case, the author submitted a complaint to the public prosecutor on 1 October 2003 and a complaint to the public prosecutor at the court of Algiers on 14 June 2006. The author also submitted a complaint to the president of Baïnem court, Algiers *wilaya*, on 31 October 2007 and a request for action to the public prosecutor of Hussein Dey on 28 January 2009.

2.8 The author was summoned on several occasions by the police and gendarmerie, as well as by the public prosecutors at Cheraga and Bab el Oued courts. She received conflicting information, with some authorities saying that her son was being sought by the security services, while others stated that that was not the case. Some authorities did not even acknowledge receipt of her complaints. The prosecutor at Cheraga court ordered an investigation, which was carried out by the Oued Koriche police in 2011 and found that Brahim El Boathi had been sought by the security services but never arrested.

2.9 The case of Brahim El Boathi was also submitted to the Working Group on Enforced or Involuntary Disappearances in December 2007.

### **The complaint**

3.1 The author claims that her son is the victim of an act of enforced disappearance attributable to the State party, as set out in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance. The author considers that the enforced disappearance of her son since 17 January 1994 constitutes (a) a violation of articles 2 (2) and (3), 6, 7, 9, 10 and 16 of the Covenant with regard to Brahim El Boathi and (b) a violation of articles 2 (2) and 7, read in conjunction with article 2 (3), of the Covenant with regard to the author and her family.

3.2 The author considers that Ordinance No. 06-01 of 27 February 2006<sup>1</sup> on the implementation of the Charter for Peace and National Reconciliation constitutes a violation of the general obligation under article 2 (2) of the Covenant, in that that provision also entails a negative obligation for States to refrain from adopting measures that are contrary to the Covenant. By adopting ordinance No. 06-01, the State party thus took a legislative measure that removed the rights recognized in the Covenant<sup>2</sup> and particularly the right to have access to an effective remedy against violations of human rights. The author claims that she and her son have been victims of this legislative provision and that article 2 (2) of the Covenant has been clearly violated in the present case.

<sup>1</sup> Ordinance No. 06-01 27 February 2006 provides for the implementation of the Charter for Peace and National Reconciliation. Article 45 of the Ordinance provides that "no individual or collective legal proceedings may be brought against members of any branch of the defence and security forces of the Republic for actions undertaken to protect persons and property, safeguard the nation and preserve the institutions of the People's Democratic Republic of Algeria."

<sup>2</sup> In support of her argument, the author refers to the concurring individual opinions of Fabián Salvioli, specifically that expressed in the case of *Chihoub v. Algeria*, communication No. 1811/2008, Views adopted on 31 October 2011.

3.3 Recalling that all domestic remedies, through both the judicial and the administrative authorities, have been exhausted, without any result or any real investigation having been conducted, the author claims that, under article 2 (3), the State party had the obligation to protect her son, Brahim El Boathi, from violations of his rights by government officials. Referring to the Committee's jurisprudence,<sup>3</sup> the author also claims that the failure to investigate allegations of violations could in and of itself give rise to a separate violation of the Covenant and that the mere denial of the involvement of the security services cannot represent compliance with article 2 (3). The author alleges that her son was prevented from exercising his right to an effective remedy against State officials and that article 2 (3) of the Covenant has been violated.

3.4 Notwithstanding the decision implying recognition by the authorities that Brahim El Boathi was still alive, the author stresses that the contradictory information received about the status of her son since his arrest in 1994 and his prolonged absence suggest that Brahim El Boathi has lost his life. Incommunicado detention furthermore represents, in the eyes of the author, a high risk of violation of the right to life in that neither detainees nor jailers are monitored in any way. Considering that the Committee's jurisprudence in the context of enforced disappearances<sup>4</sup> has evolved and that it now recognizes the responsibility of the State for violation of the right to life in certain cases where the death of the victim has not been established, the author alleges that the State party has failed in its duty to protect the right to life of her son, and that article 6 of the Covenant has been violated.

3.5 Recalling the circumstances surrounding the disappearance of her son, including the total lack of information on his detention, his imprisonment and his state of health and the absence of communication with his family and the outside world, the author claims that Brahim El Boathi was subjected to a form of inhuman or degrading treatment. She also recalls that prolonged arbitrary detention increases the risk of torture and inhuman or degrading treatment. Referring to the committee's jurisprudence, the author further emphasizes that the anguish, uncertainty and distress caused by the disappearance of Brahim El Boathi and the contradictory information received since that time constitute a form of inhuman or degrading treatment for the family. The author alleges that the State party is responsible for a violation of article 7 with regard to Brahim El Boathi and a violation of article 7 read in conjunction with article 2 (3) of the Covenant with regard to him and his family.

3.6 Recalling that Brahim El Boathi was detained incommunicado without access to defence counsel, without being informed of the grounds for his arrest or the charges against him, that his detention was not entered in the police custody registers and there is no official record of his whereabouts or his fate, the author claims that her son has been deprived of his right to liberty and security and that the investigations have displayed none of the efficiency or effectiveness required. The author alleges that the State party is responsible for a violation of article 9 of the Covenant with regard to Brahim El Boathi.

3.7 In view of the fact that enforced disappearance is often accompanied by violations of the most basic rights of the person deprived of liberty, the author considers that, as a result of the disappearance and the lack of any proper investigation, the State party is responsible for a violation of article 10 of the Covenant with regard to Brahim El Boathi.

3.8 Recalling that the Algerian authorities have never provided clear information on the fate of Brahim El Boathi and kept him detained without admitting it, the author submits that the State party has treated Brahim El Boathi as an object and that his right to recognition as a person before the law and his dignity have been violated. The author alleges that, in removing her son from the protection of the law, the Algerian authorities have denied his right to recognition as a person before the law and are therefore responsible for a violation of article 16 of the Covenant.

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<sup>3</sup> See communication No. 1588/2007, *Benaziza v. Algeria*, Views adopted on 26 July 2010, para. 9.9.

<sup>4</sup> In support of that argument, the author cites communication No. 1753/2008, *Guezout et al. v. Algeria*, Views adopted on 19 July 2012, para. 8.4; communication No. 1905/2009 (and corrigendum), *Khirani v. Algeria*, Views adopted on 26 March 2012, para. 7.4; communication No. 1781/2008, *Djebrouni v. Algeria*, Views adopted on 31 October 2011, para. 8.4; and communication No. 1780/2008, *Aouabdia v. Algeria*, Views adopted on 2 March 2011, para. 7.10.

3.9 The author requests that the Committee order the State party to: (a) find that Algeria has violated articles 2 (2) and (3), 6, 7, 9, 10 and 16 of the Covenant with regard to Brahim El Boathi and articles 2 (2) and 7, read in conjunction with article 2 (3), of the Covenant with regard to the author and her family; (b) find Brahim El Boathi; (c) bring the perpetrators of this enforced disappearance before the competent civil authorities for prosecution; (d) provide Brahim El Boathi, if he is still alive, and his family with adequate, effective and prompt reparation for the harm suffered, including compensation that is appropriate and proportional to the gravity of the violation, full and complete rehabilitation and guarantees of non-repetition.

#### **State party's observations**

4.1 On 4 May 2015, the State party contested the admissibility of all the communications concerning the period 1993 to 1998, submitting a copy of its background memorandum.

4.2 The State party is of the view that these communications, which incriminate 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”. It 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 bringing about the “collapse of the Republican State”. It was in this context, and in conformity with the Constitution (arts. 87 and 91), that the Algerian Government implemented precautionary measures and informed the United Nations Secretariat of its declaration of a state of emergency, in accordance with article 4 (3) of the Covenant.

4.3 The State party 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, many enforced disappearances should be viewed from 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 services but who took advantage of their subsequent release to go into hiding. The third scenario concerns persons abducted by armed groups which, because they were not identified or because they had stolen uniforms or identification documents from police officers or soldiers, were mistakenly thought to belong to the armed forces or security services. The fourth scenario concerns persons reported missing who abandoned their families, and sometimes even left the country, to escape from personal problems or family disputes. The fifth scenario concerns persons reported missing by their family but who were in fact wanted terrorists who had been killed and buried in the maquis following factional infighting, doctrinal disputes or arguments over the spoils of war among rival armed groups. The sixth scenario mentioned by the State party concerns persons reported missing who were actually living in Algeria or abroad under a false identity provided by a network of document forgers.

4.4 The State party also 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, decided to adopt a policy of support for the handling of the tragic problem of disappearances. The issue of missing persons is addressed in a comprehensive framework, which takes account of all persons who disappeared in the context of the “national tragedy”, and under which all victims are offered support in overcoming their ordeal and all victims of disappearance and their beneficiaries are entitled to redress. The State party emphasizes that this is an appropriate response to the situation of the Algerian nation that has been generally supported by the nation. A statistical overview of the implementation of the operative

provisions of Ordinance 06-01 of 27 February 2006 and subsequent texts related to the issue of disappeared persons in the Charter for Peace and National Reconciliation confirms the support of over 85 per cent of relatives of victims or their beneficiaries.

4.5 The State party then emphasizes the nature, principles and content of the Charter for Peace and National Reconciliation and its implementing texts. Far from the stereotypes and harsh judgments that depict the Charter as an impediment to the procedure for establishing truth and administering justice, it is, rather, an internal national mechanism for dealing with and ending the crisis that has been submitted for public approval and adopted by referendum. The State party first describes the origins and main characteristics of the Algerian crisis in order to assess the impact of implementation of the Charter. The Charter has been introduced against the background of a political and security crisis that has shaken the country, described as the “Great *Fitna*”, with reference to the historical and religious concept of the deep discord that existed within the community of Islam after the death of the Prophet. The preamble of the Charter suggests that the “Great *Fitna*”, which attempted to “divert Algeria’s development from its natural course”, constituted a “criminal aggression aimed at calling into question the very existence of the national State”, resulting in a “national tragedy” that took “a terrible bloody toll” of the people by means of “barbaric terrorism” acting “in contradiction with the true values of Islam and the Muslim traditions of peace, tolerance and solidarity”. The Ordinance and the four implementing decrees are intended to respond to the “Great *Fitna*” and prevent any repetition of it through the adoption of political, legal and socioeconomic measures. The implementing Ordinance prescribes legal measures involving the discontinuance of criminal proceedings and the commutation or remission of sentences for any person who has been found guilty of acts of terrorism or who is benefiting 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 a judicial declaration of 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 to be victims of the “national tragedy”. Finally, the Ordinance prescribes political measures, such as a ban on political activity for any person who exploited religion in the past in a way that contributed to the “national tragedy”, and establishes the inadmissibility of individual or collective proceedings brought against members of any branch of the defence and security forces of Algeria for actions undertaken to protect persons and property, safeguard the nation and preserve its institutions.

4.6 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 begin 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 authors’ allegations concerning the period of the national tragedy are covered by the comprehensive domestic settlement mechanism provided for in the Charter.

#### **Author’s comments on the State party’s observations**

5.1 On 16 July 2015, the author submitted her comments on the State party’s observations.

5.2 The author emphasizes that the State party’s observations are inappropriate and obsolete, given that they are addressed to another body concerned with the promotion and protection of human rights (the Working Group on Enforced or Involuntary Disappearances) and are dated July 2009. The author further emphasizes that the State party’s observations do not deal at all with the admissibility of the communication, the particulars of the case or the remedies sought by the victim’s family and therefore demonstrate the Algerian authorities’ disregard and disdain for this procedure.

5.3 Recalling that none of the remedies sought have led to a thorough investigation or criminal proceedings and that the Algerian authorities have failed to provide tangible evidence of any real efforts to locate Brahim El Boathi and identify those responsible for

his disappearance, the author concludes that domestic remedies have been exhausted and that the Committee should find the communication admissible.

5.4 Referring to the Committee's jurisprudence whereby the Charter for Peace and National Reconciliation cannot be used against persons who submit individual communications, the author recalls that the provisions of the Charter are certainly not a satisfactory response to the problem of disappearances, which should be based on respect for the right to the truth, justice and full redress.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 As required under article 5 (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. The Committee notes that the disappearance was reported to the Working Group on Enforced or Involuntary Disappearances. However, it recalls that extra-conventional procedures or mechanisms established by the Human Rights Council to examine and report publicly on human rights situations in specific countries or territories or on cases of widespread human rights violations worldwide do not generally constitute an international procedure of investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol.<sup>5</sup> Accordingly, the Committee considers that the examination of Brahim El Boathi's case by the Working Group on Enforced or Involuntary Disappearances does not render the communication inadmissible under this provision.

6.3 The Committee notes that, by way of disputing the admissibility of the communication, the State party has simply referred to its background memorandum on the treatment of disappearances in the light of the Charter for Peace and National Reconciliation. The Committee recalls that the State party has a duty not only to carry out thorough investigations of alleged violations of human rights brought to the attention of its authorities, particularly enforced disappearances or violations of the right to life, but also to prosecute, try and punish anyone held to be responsible for such violations.<sup>6</sup> The author notified the competent authorities, both judicial and administrative, of her son's disappearance on multiple occasions. The Committee takes note that the National Advisory Commission for the Promotion and Protection of Human Rights investigated the case of Brahim El Boathi. However, the author has disputed the results of the investigation and, given the total lack of information provided by the State party, the Committee accepts her arguments. The Committee also takes note of the fact that Cheraga court ordered a police investigation. Nevertheless, since the investigation was carried out by the Oued Koriche police, of which A.Z., the officer who allegedly arrested and executed Brahim El Boathi, was a member, the Committee cannot consider the procedure to be impartial. It thus appears from the facts as described by the author that the State party has not conducted an in-depth, thorough and impartial investigation of the disappearance. Moreover, the State party has not offered any specific explanation in its observations regarding the case of Brahim El Boathi that would lead to the conclusion that an effective remedy is available. In addition, Ordinance No. 06-01 continues to be applied despite the Committee's recommendation that it be brought into line with the Covenant (see CCPR/C/DZA/CO/3, paras. 7, 8 and 13). The Committee therefore concludes that article 5 (2) (b) of the Optional Protocol is not an obstacle to the admissibility of the present communication.

<sup>5</sup> See, inter alia, communication No. 2098/2011, *Ammari v. Algeria*, Views adopted on 30 October 2014; communication No. 2026/2011, *Sassene v. Algeria*, Views adopted on 29 October 2014; communication No. 1791/2008, *Boudjemai v. Algeria*, Views adopted on 22 March 2013, para. 7.2; communication No. 1779/2008 (and Rev.1), *Mezine v. Algeria*, Views adopted on 25 October 2012, para. 7.2; and *Djebrouni v. Algeria*, para. 7.2.

<sup>6</sup> See, inter alia, *Sassene v. Algeria*, para. 6.3; *Ammari v. Algeria*, para. 7.3; *Mezine v. Algeria*, para. 7.4; *Djebrouni v. Algeria*, para. 7.4; *Khirani v. Algeria*, para. 6.4; and *Boudjemai v. Algeria*, para. 7.4.

6.4 The Committee notes that the author claims a violation of article 2 (2) of the Covenant in respect of her rights and of those of Brahim El Boathi. The Committee recalls that the provisions of article 2 of the Covenant lay down general obligations for States parties, which cannot by themselves give rise to a claim in a communication.<sup>7</sup> This part of the communication is therefore inadmissible under article 3 of the Optional Protocol.

6.5 The Committee considers that the allegations which raise issues under articles 6, 7, 9, 10 and 16, read alone and in conjunction with article 2 (3), of the Covenant, have been sufficiently substantiated and there is no obstacle to their admissibility. The Committee therefore proceeds to consider the communication on the merits with regard to the alleged violations of articles 6, 7, 9, 10, 16 and 2 (3) of the Covenant.

#### *Consideration on the merits*

7.1 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 (1) of the Optional Protocol.

7.2 The Committee notes that the State party has merely referred to its collective and general comments, which it has previously transmitted to the Working Group on Enforced or Involuntary Disappearances and the Committee in relation to other communications, in order to confirm its position that such cases have already been settled through the implementation of the Charter for Peace and National Reconciliation. The Committee refers to its jurisprudence and recalls that the State party may not invoke the provisions of the Charter against persons who invoke provisions of the Covenant or who have submitted, or may submit, communications to the Committee. The Covenant requires the State party to show concern for the fate of each individual and to treat each person with respect for the inherent dignity of the human person.<sup>8</sup> In the present case, Ordinance No. 06-01 — without the amendments recommended by the Committee — promotes impunity and therefore cannot, as it currently stands, be considered compatible with the Covenant.<sup>9</sup>

7.3 The Committee notes that the State party has not replied to the author's allegations concerning the merits of the case and recalls its jurisprudence, according to which the burden of proof should not rest solely on the author of a communication, especially given that the author and the State party do not always have the same degree of access to evidence and that often only the State party is in possession of the necessary information.<sup>10</sup> In conformity with article 4 (2) of the Optional Protocol, the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives, and to provide the Committee with the information available to it.<sup>11</sup> In the absence of any explanation from the State party in this respect, due weight must be given to the author's allegations, provided they have been sufficiently substantiated.

7.4 The Committee recalls that, while the Covenant does not explicitly use the term "enforced disappearance" in any of its articles, enforced disappearance constitutes a unique and integrated series of acts that represents continuing violation of various rights recognized in that treaty.<sup>12</sup>

<sup>7</sup> See communication No. 2019/2010, *Poplavny v. Belarus*, View adopted on 5 November 2015, Appendix I, para. 6; communication No. 2030/2011, *Poliakov v. Belarus*, Views adopted on 17 July 2014, para. 7.4; communication No. 2202/2012, *Castañeda v. Mexico*, Views adopted on 18 July 2013, para. 6.8; communication No. 1834/2008, *A.P. v. Ukraine*, decision adopted on 23 July 2012, para. 8.5; and communication No. 1887/2009, *Peirano Basso v. Uruguay*, Views adopted on 19 October 2010, para. 9.4.

<sup>8</sup> See *Sassene v. Algeria*, para. 7.2; and *Ammari v. Algeria*, para. 8.2.

<sup>9</sup> See *Ammari v. Algeria*, para. 8.2.

<sup>10</sup> See, inter alia, *Ammari v. Algeria*, para. 8.3; *Mezine v. Algeria*, para. 8.3; communication No. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, Views adopted on 26 July 2010, para. 7.4; and *Djebrouni v. Algeria*, para. 8.3.

<sup>11</sup> See *Mezine v. Algeria*, para. 8.3; and communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.3.

<sup>12</sup> See communication No. 2000/2010, *Katwal v. Nepal*, Views adopted on 1 April 2015, para. 11.3; and communication No. 2134/2012, *Serna et al v. Colombia*, Views adopted on 9 July 2015, para. 9.4.



7.5 The Committee notes that the author's son was last seen taking the bus from Place des Martyrs on 17 January 1994 and that the author and her family have been without news of him since that day. The Committee also notes that, at the Oued Koriche police station, Officer A.Z. told the prosecutor of Baïnem court in Algiers that he had arrested Brahim El Boathi but later told the author that he had arrested and killed her son. The Committee takes note of the many contradictory pieces of information regarding Brahim El Boathi's fate, including the refusal on 2 May 2000 to issue a disappearance decision, implying that the Algerian authorities still believed him to be alive at that time. The Committee notes that the State party has not provided any evidence to clarify the conflicting information provided to the author concerning the fate of Brahim El Boathi, nor to confirm the date or the circumstances of his possible death. It recalls that, in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.<sup>13</sup> In the light of the statements by Officer A.Z. and the many years since Brahim El Boathi's disappearance, it is highly likely that, the absence of a body notwithstanding, he was the victim of summary execution by Officer A.Z. or that he died in detention. In the present case, the Committee notes that the State party has produced no evidence to indicate that it has fulfilled its obligation to protect the life of Brahim El Boathi. The Committee therefore finds that the State party has failed in its duty to protect Brahim El Boathi's life, in violation of article 6 (1) of the Covenant.

7.6 The Committee acknowledges the degree of suffering caused by being detained without contact with the outside world for an indefinite period. It recalls its general comment No. 20 (1992) on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, in which it recommends that States parties take steps to prohibit incommunicado detention. It notes, in the present case, that the author and Brahim El Boathi's family have never received any information on his fate or place of detention. The Committee therefore finds that Brahim El Boathi, who disappeared on 17 January 1994 and was still considered to be alive on 2 May 2000, was held incommunicado for at least that length of time by the Algerian authorities. In the absence of any explanation from the State party, the Committee considers that this disappearance constitutes a violation of article 7 of the Covenant with regard to Brahim El Boathi.<sup>14</sup>

7.7 In the light of the foregoing, the Committee will not consider separately the claims in relation to the violation of article 10 of the Covenant.<sup>15</sup>

7.8 The Committee also takes note of the anguish and distress caused to the author and her family by the disappearance of Brahim El Boathi. It considers that the facts before it disclose a violation with regard to them of article 7, read alone and in conjunction with article 2 (3), of the Covenant.<sup>16</sup>

7.9 With regard to the alleged violation of article 9, the Committee takes note of the author's allegations that Brahim El Boathi was arbitrarily arrested, without a warrant, and was not formally charged or brought before a judicial authority before which he could have challenged the lawfulness of his detention. In the absence of any information from the State party in that regard, the Committee considers that due weight must be given to the author's

<sup>13</sup> See communication No. 2117/2011, *Louddi v. Algeria*, Views adopted on 30 October 2014, para. 7.4; *Mezine v. Algeria*, para. 8.4; and *Boudjemai v. Algeria*, para. 8.4.

<sup>14</sup> See *Ammari v. Algeria*, para. 8.5; *Mezine v. Algeria*, para. 8.5; *Khirani v. Algeria*, para. 7.5; *Djebrouni v. Algeria*, para. 8.5; and communication No. 1295/2004, *El Alwani v. Libyan Arab Jamahiriya*, Views adopted on 11 July 2007, para. 6.5.

<sup>15</sup> See *Ammari v. Algeria*, para. 8.6.

<sup>16</sup> See *Mezine v. Algeria*, para. 8.6; *Khirani v. Algeria*, para. 7.6; *Djebrouni v. Algeria*, para. 8.6; *El Abani v. Libyan Arab Jamahiriya*, para. 7.5; and communication No. 1422/2005, *El Hassy v. Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 6.11.

allegations.<sup>17</sup> The Committee therefore finds a violation of article 9 with regard to Brahim El Boathi.<sup>18</sup>

7.10 The Committee is of the view that the intentional removal of a person from the protection of the law for a prolonged period of time constitutes a refusal to recognize him or her as a person before the law, particularly if the efforts of his or her relatives to obtain access to potentially effective remedies have been systematically impeded.<sup>19</sup> In the present case, the Committee notes that the State party has not furnished any convincing explanation concerning the fate or whereabouts of Brahim El Boathi despite the multiple requests addressed to the State party by the author. The Committee finds that Brahim El Boathi's enforced disappearance more than 23 years ago removed him from the protection of the law and deprived him of his right to be recognized as a person before the law, in violation of article 16 of the Covenant.

7.11 The author invokes article 2 (3) of the Covenant, which requires States parties to ensure that individuals have accessible, effective and enforceable remedies for asserting the rights recognized in the Covenant. The Committee recalls the importance it attaches to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing complaints of violations of the rights guaranteed under the Covenant.<sup>20</sup> It recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, according to which the failure by a State party to investigate allegations of violations could, in itself, give rise to a separate breach of the Covenant. In the present case, the family of Brahim El Boathi informed the competent authorities, including the public prosecutor of Algiers court, of Mr. El Boathi's disappearance, but the State party has not initiated an in-depth, thorough and impartial investigation into the disappearance and the author has received only vague and contradictory information. Furthermore, the legal impossibility of applying to a judicial body since the promulgation of Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation continues to deprive Brahim El Boathi, the author and her family of any access to an effective remedy given that the Ordinance prohibits using the justice system to shed light on the worst offences, including enforced disappearance (see CCPR/C/DZA/CO/3, para. 7). The Committee finds that the facts before it reveal a violation of article 2 (3), read in conjunction with article 6 (1), 7, 9 and 16, with regard to Brahim El Boathi and of article 2 (3) read in conjunction with article 7 with regard to the author and her family.

8. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses a violation by the State party of articles 6 (1), 7, 9 and 16 of the Covenant as well as of article 2 (3), read in conjunction with articles 6 (1), 7, 9 and 16, with regard to Brahim El Boathi. The Committee also finds a violation by the State party of article 7 of the Covenant, read in conjunction with article 2 (3), with regard to the author and her family.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This provision requires that States parties make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is obliged to: (a) conduct an in-depth, thorough and impartial investigation into the disappearance of Brahim El Boathi and provide the author and her family with detailed information about the results of its investigation; (b) release Brahim El Boathi immediately if he is still being held incommunicado; (c) in the event that he is deceased, return his remains to his family; (d) prosecute, try and punish those

<sup>17</sup> See communication No. 2297/2013, *Chani v. Algeria*, para. 7.5, Views adopted on 11 March 2016.

<sup>18</sup> See, inter alia, *Mezine v. Algeria*, para. 8.7; *Khirani v. Algeria*, para. 7.7; and *Djebrouni v. Algeria*, para. 8.7.

<sup>19</sup> See communication No. 2164/2012, *Basnet v. Nepal*, Views adopted on 12 July 2016, para. 10.9; communication No. 2038/2011, *Tharu et al v. Nepal*, Views adopted on 3 July 2015, para. 10.9; and *Serna et al v. Colombia*, para. 9.5.

<sup>20</sup> See communication No. 2132/2012, *Kerouane v. Algeria*, Views adopted on 30 October 2014, para. 7.11.

responsible for the violations that have been committed; (e) provide adequate compensation to the author for the violations perpetrated against her, and to Brahim El Boathi, if he is alive; and (f) provide appropriate satisfaction for the author and her family. 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. It is also under an obligation to take steps to prevent similar violations in the future. In that regard, the Committee is of the opinion that the State party should review its legislation in the light of its obligation under article 2 (2) and, particularly, reconsider Ordinance No. 06-01 with a view to ensuring that the rights established under the Covenant may be fully enjoyed in the State party.

10. 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 guarantee 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.

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