



## 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. 2283/2013\*, \*\*

<i>Submitted by:</i>	Abdelkader Boudjema (represented by the Alkarama Foundation)
<i>Alleged victims:</i>	The author and Mahmoud Boudjema (the author's father)
<i>State party:</i>	Algeria
<i>Date of the communication:</i>	18 June 2013 (initial submission)
<i>Document references:</i>	Decision under rules 92 and 97 of the rules of procedure, transmitted to the State party on 16 August 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	30 October 2017
<i>Subject matter:</i>	Enforced disappearance
<i>Procedural issue:</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 the person; respect for the inherent dignity of the human person; recognition as a person before the law; right to privacy; right to family life
<i>Articles of the Covenant:</i>	2 (3), 6 (1), 7, 9 (1–4), 10 (1), 16, 17 and 23 (1)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2)

1.1 The author of the communication, dated 18 June 2013, is Abdelkader Boudjema, a national of Algeria. He is represented by the Alkarama Foundation. He claims that his father, Mahmoud Boudjema, born on 1 April 1946 and also an Algerian national, was the victim of enforced disappearance attributable to the State party, in violation of articles 6 (1), 7, 9 (1–4), 10 (1), 16, 17, 23 (1) and 2 (3) of the Covenant. The author claims that he himself has been a victim of violations of articles 7, 17, 23 (1) and 2 (3). The Covenant and

\* Adopted by the Committee at its 121st session (16 October–10 November 2017).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Ilze Brands Kehris, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.



the Optional Protocol to the Covenant entered into force for the State party on 12 December 1989. The author is represented by the Alkarama Foundation.

1.2 The author of the communication requested interim measures of protection in the context of Ordinance No. 06-01 of 27 February 2006 on the implementation of the Charter for Peace and National Reconciliation, and specifically in respect of article 46, which specifies that it is a criminal offence “for anyone, by their statements, writings or any other act, to use or exploit the wounds of the national tragedy to harm the institutions of the People’s Democratic Republic of Algeria, weaken the State, impugn the honour of its representatives who have served it with dignity or tarnish the country’s international image”. He thus asked the Committee to request that the State party refrain from harassing or intimidating him for the steps he had taken with the Committee. He also requested interim measures for Mahmoud Boudjema. In the hope that he was still alive, the author requested the Committee to ask the State party to place him under the protection of the law and to proceed with his release. The request for interim measures was transmitted on 16 August 2013, the Committee having recalled, in its communication with the State party, rule 92 of its rules of procedure, and in this context, specifically having requested the State party to “refrain from invoking national legislation, including Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation, against the author and members of his family”.

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

2.1 Mahmoud Boudjema, father of 10 children, lived in the village of Emir Abdelkader, in Jijel *wilaya* (governorate). The region, mountainous and isolated, had a strong military presence in the 1990s. The author alleges that thousands of persons in the region were victims of summary executions, arbitrary arrests and enforced disappearances following the cancellation of legislative elections. As for Mahmoud Boudjema, he was arrested at his home by soldiers of the people’s national army on the night of 19 to 20 August 1996. That night, several uniformed soldiers pounded on the door of the family home while others broke a window in the bedroom of one of his sons, Abdelkader Boudjema, author of this communication. With Kalashnikovs aimed at Abdelkader Boudjema, the author’s mother, H.B., complied with the soldiers’ orders and opened the front door. The soldiers, who were seeking Ramadan Boudjema, searched the house and asked to see the identification papers of Mahmoud Boudjema. On the commander’s orders, they were prepared to leave, until a member of the military in a balaclava arrived, stating that the person they sought was in fact Mahmoud Boudjema. The soldiers then brutally proceeded to arrest Mahmoud Boudjema without mentioning the reasons for the arrest or the place where he would be taken. His children remained with their mother, who had lost consciousness.

2.2 The next morning Mahmoud Boudjema’s family discovered that an operation led by Commander S.L. had resulted in the arrest of some 20 persons in the village of Emir Abdelkader. A.B., a resident of the village, had driven the persons in question in his bus, which had been commandeered by the army, to the centre of Jijel, to a barracks at the Jijel military district headquarters.

2.3 Mahmoud Boudjema’s wife, along with the families of others who had been arrested that night, visited the Jijel military district headquarters; the soldiers denied that her husband was there and even that they had conducted the raid on the night of 19 to 20 August. She subsequently visited the barracks several times, without obtaining any information about the fate of her husband. In December 1996, M.B. and R.B., both of whom had been arrested with Mahmoud Boudjema, stated that they had been held with Mr. Boudjema the night of the arrest, before being separated. This was the only information received by Mahmoud Boudjema’s family.

2.4 The author alleges that a climate of generalized terror reigned in the Jijel region and that in March 1997 a reprisal operation was conducted by the Emir Abdelkader gendarmerie brigade against the family members of persons disappeared on the night of 19 to 20 August who had tried to find out what had happened to their relatives. They were reportedly detained and tortured for 14 days. One of the victims of this operation reported that S.G., the head of the brigade, told him “if you do not confess that you support terrorist groups, you will suffer the same fate as your father”.

2.5 In this context, Mahmoud Boudjema's wife made numerous inquiries, which she at times had to stop out of fear of reprisals, in particular between 1998 and 2003. She thus went to the prosecution services of the Jijel and Taher courts, the local authorities competent to deal with her husband's disappearance, but her complaints were not even registered. These informal inquiries with the administrative authorities, gendarmerie brigades, military barracks and police stations, of which there were many, were fruitless. She also sent: (a) a registered letter on 27 May 1997 to the commander of the Jijel military district asking him to intervene and to shed light on her husband's disappearance; and (b) a formal complaint, on 3 June 1997, to the State prosecutor of the Jijel court. Her inquiries went unanswered, and as she received threats of reprisals, she suspended her search efforts until 2005.

2.6 On 2 January 2005 Mahmoud Boudjema's wife sent a letter: (a) to the President of the National Advisory Commission for the Promotion and Protection of Human Rights; (b) the President of the Republic; (c) the Prime Minister; (d) the Minister of the Interior; and (e) the Minister of Justice. No action was taken in response. On 4 January 2005 her complaint was finally registered by the Taher court. It issued an order dismissing criminal proceedings on 18 June 2005. She received a notification of the dismissal, without any justification for it, more than a month after the decision was taken, thus making it impossible to appeal to the indictment division of the court.

### **The complaint**

3.1 The author considers that his communication is in compliance with the conditions established by article 5 of the Optional Protocol to the International Covenant on Civil and Political Rights. He emphasizes that the submission on 30 November 2008 of the same case to the Working Group on Enforced or Involuntary Disappearances (case No. 10002539) does not prevent the Committee from considering the case, as the Working Group cannot be likened to a procedure of international investigation or settlement. He further argues that the numerous inquiries made by the victim's wife, through both the administrative authorities and the courts, demonstrate that domestic remedies have been exhausted. He adds that the domestic remedies are particularly ineffective with regard to the question of enforced disappearance, as the authorities systematically deny having any knowledge of cases of persons detained incommunicado. As for the judiciary, he argues that the system lacks transparency and that the judiciary's control over the security services is limited. Lastly, he points out that such remedies have been unavailable since the adoption of Ordinance No. 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation, as article 45 of the Ordinance prohibits "any proceedings instituted against any branch of the defence and security forces of the Republic".

3.2 On the merits, the author alleges that his father is a victim of enforced disappearance attributable to the State party, as it occurred owing to the acts of representatives of the people's national army, in military uniform, as defined by article 7 (2) (i) of the Statute of the International Criminal Court and article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance. The author argues that although no provision of the Covenant expressly mentions enforced disappearance, such practices involve violations of the right to life, the right not to be subjected to torture and other inhuman or degrading treatment or punishment and the right to liberty and security of person. In the present case, the author is claiming that the State party has violated articles 6 (1), 7, 9 (1-4), 10 (1), 16, 17 and 23 (1), and 2 (3).

3.3 The author recalls the paramount nature of the right to life and the obligation of the State party not only to refrain from arbitrarily depriving an individual of the right to life, but also to prevent and punish any act involving a violation of article 6, including when the perpetrator or perpetrators are representatives of the State. He further points out the obligation of the State to protect the lives of persons in detention and to investigate any cases of disappearance; as the absence of an inquiry may in itself constitute a breach of article 6, including in cases where the disappearance is not the result of actions by representatives of the State. The author argues that his father's disappearance is beyond any doubt the result of an operation carried out under the control of the State authorities. The incommunicado detention in which Mahmoud Boudjema might still be held undeniably

represents a high risk of violation of his right to life. His detention should have been registered, in accordance with the Algerian Code of Criminal Procedure. These factors, taken together with the absence of an investigation, are proof of the State party's failure to carry out its obligations and constitute a violation of article 6 (1) read alone and in conjunction with article 2 (3).

3.4 The author then points out the absolute and non-derogable nature of the right not to be subjected to acts of torture or cruel, inhuman or degrading treatment or punishment. He argues that incommunicado detention systematically creates an environment conducive to torture, insofar as the person is outside the reach of the law. He points to the Committee's jurisprudence, according to which such a practice may in itself constitute a violation of article 7 of the Covenant. He points out that the State party is obliged: (a) to prevent such violations and punish those responsible; (b) to take measures against incommunicado detention, such as the registration of detainees or provision of access to a lawyer; and (c) to conduct an investigation as soon as an allegation of incommunicado detention is made or brought to its attention. In this regard, the author points out that Ordinance No. 06-01 is at variance with the obligation to carry out an investigation. The author affirms that his father, with no knowledge of the reasons for his arrest or his maintenance in detention, and without being registered in any register, was, or has continued for the past 17 years to be, in incommunicado detention, completely cut off from the outside world. The author alleges that: (a) the incommunicado detention is attributable to the State party; (b) the State party has taken no steps to stop or remedy the situation of incommunicado detention; and (c) the rejection of the case by the investigating judge at the Taher court amounts to a denial of justice. He thus argues that Mahmoud Boudjema is a victim of a violation of article 7. With regard to the family, the author alleges that the anguish, distress and uncertainty caused by the authorities' denials and the absence of an inquiry over a period of 17 years constitute inhuman treatment and are a violation of article 7, read in conjunction with article 2 (3).

3.5 The author then points out that the right to liberty and security of person, as recognized under article 9 of the Covenant, prohibits arbitrary arrest and detention and imposes on the State a number of procedural guarantees. He alleges that Mahmoud Boudjema is a victim of a violation by the State party of articles: (a) 9 (1), as he was a victim of arbitrary deprivation of liberty; (b) 9 (2), as the soldiers who arrested him did so without communicating the reasons for the arrest or presenting a warrant, and it is likely that he never received an official notification after his arrest; (c) 9 (3), as under the Code of Criminal Procedure, if he was a person suspected of acts of terrorism, he should have been held in pretrial detention for a maximum period of 12 days; and (d) 9 (4), as he was removed from the protection of the law and was never able to challenge the legality of his detention.

3.6 The author then points to the fundamental and universal principle according to which "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person", as set out in article 10 (1) of the Covenant. He argues that, insofar as Mahmoud Boudjema was subjected to inhuman or degrading treatment in violation of article 7 of the Covenant, he was all the more so a victim of a violation of article 10 (1), as the inhuman or degrading treatment was by nature incompatible with respect for the inherent dignity of the human person.

3.7 The author also recalls that everyone has the right to recognition as a person before the law. He refers to the concluding observations on the second periodic report of Algeria under article 40 of the Covenant,<sup>1</sup> in which the Committee established that disappeared individuals who are still alive and kept incommunicado have their right to recognition as persons before the law, enshrined in article 16 of the Covenant, violated. He thus argues that the incommunicado detention of Mahmoud Boudjema constitutes a violation of article 16 of the Covenant, attributable to the State party.

3.8 The author, recalling that article 17 of the Covenant protects persons against any arbitrary or unlawful interference in their privacy, home or correspondence, and citing the

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<sup>1</sup> See CCPR/C/79/Add.95, para. 10.

Committee's general comment No. 16 (1988) on the right to privacy and its jurisprudence,<sup>2</sup> argues that the circumstances of Mahmoud Boudjema's arrest, which was conducted with brutality and without a warrant, constitute a violation of article 17 attributable to the State party, in respect of both himself and his father.

3.9 Recalling that article 23 (1) of the Covenant provides for the right to protection of the family, the author argues that the disappearance of Mahmoud Boudjema, which deprived his family of a father and husband, constitutes a violation of that article, in respect of both the family and his father.

3.10 Lastly, the author recalls that article 2 (3) guarantees access to effective remedies for any person claiming a violation of any of his rights protected by the Covenant. He maintains that Mahmoud Boudjema, a victim of enforced disappearance, is de facto unable to exercise any remedy. Based on the jurisprudence of the Committee, he further recalls the obligation of the State party to conduct inquiries into alleged violations of human rights, to prosecute the presumed perpetrators and punish them, and he considers that the lack of response on the part of the Algerian authorities to the requests of the victim's wife constitutes a breach of the State party's obligations under article 2 of the Covenant. Lastly, he maintains that Ordinance No. 06-01, and specifically its article 45, constitutes a violation of the State party's obligation to ensure an effective remedy. Accordingly, he asked the Committee to recognize that a violation has occurred of article 2 (3) read alone and in conjunction with articles 6, 7, 9, 10 and 16 of the Covenant.

3.11 The author requests that the Committee find: (a) a violation of articles 2 (3), 6 (1), 7, 9 (1-4), 10 (1), 16, 17 and 23 (1) in respect of Mahmoud Boudjema; and (b) a violation of articles 2 (3), 7, 17 and 23 (1) in respect of himself. He also asks the Committee to request the State party: (a) to release Mahmoud Boudjema if he is still alive; (b) to provide him with an effective remedy, including by conducting a thorough and effective investigation into the father's enforced disappearance; (c) to inform him and his family about the results of the investigation and provide appropriate compensation to the victim, the author and his family for the violations they have suffered; and (d) to provide reparation to Mahmoud Boudjema or his beneficiaries for the violations they have suffered. Lastly, he requests the Committee to call upon the State party: (a) to initiate criminal proceedings against those presumed to be responsible for the disappearance of Mahmoud Boudjema, to try them and punish them, notwithstanding the Ordinance implementing the Charter for Peace and National Reconciliation; and (b) to take appropriate measures to ensure that such violations do not recur.

#### **Further submissions and requests from the authors**

4. On 21 November 2013, the author's counsel informed the Committee that Abdelkader Boudjema had on 13 November 2013 been summoned to the community gendarmerie brigade office covering his place of residence, the village of Emir Abdelkader. The gendarmes reportedly asked about the circumstances of his father's disappearance, without issuing him any record or documentation. The author claims to have received a threat of criminal prosecution under article 46 of Ordinance No. 06-01. Accordingly, the author's counsel has requested the Committee to remind the State party to refrain from harassing or taking criminal measures against the author or members of his family. On 22 November 2013, in its correspondence with the State party, the Committee pointed to rule 92 of its rules of procedure and reiterated its request to refrain from invoking domestic legislation, and specifically Ordinance No. 06-01, against the author and members of his family.

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

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

<sup>2</sup> See communication No. 687/1996, *Rojas García v. Colombia*, Views adopted on 3 April 2001, para. 10.3.

5.2 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.

5.3 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 have been 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 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.

5.4 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 No. 06-01 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.

5.5 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. Far from the stereotypes and harsh judgments that depict the Charter as an impediment to the procedure for establishing truth and justice, it is, rather, an internal national mechanism for finding a way out of 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 “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 it 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.

5.6 In addition to the establishment of funds to compensate all victims of the “national tragedy”, the sovereign people of Algeria have, according to the State party, agreed to a process of national reconciliation as the only way to heal the wounds inflicted. The State party insists that the proclamation of the Charter for Peace and National Reconciliation reflects a desire to avoid confrontation in the courts, media outpourings and political score-settling. The State party is therefore of the view that the allegations relating to 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 submission**

6.1 On 6 August 2015, the author submitted comments on the State party’s observations.

6.2 The author emphasizes that the State party’s observations are inappropriate, as they refer to a standard document that is general and vague, and what is more, one that is addressed to another body for the promotion and protection of human rights (the Working Group on Enforced or Involuntary Disappearances), and is outdated, as it dates from July 2009. The author emphasizes that the State party’s observations in no way mention the specificities of the case and provide no response regarding the particular circumstances of Mahmoud Boudjema’s disappearance.

6.3 The author considers that the State party’s challenge of the Committee’s competence on the grounds that it would be necessary to consider the cases of enforced disappearance in the period from 1993 to 1998 through a comprehensive, non-individualized approach is devoid of any relevance, as the State party has ratified the Covenant and its Optional Protocol and has thus recognized the competence of the Committee to hear communications by individual victims of violations of the rights set forth in the Covenant. He further stresses that the declaration of the state of emergency as provided for under article 4 of the Covenant in no way affects the prohibition of enforced disappearance or the exercise of the rights stemming from the Optional Protocol. He adds that the maintenance of a state of emergency for nearly two decades, during which the authorities of the State party committed gross and systematic violations of human rights, in itself constitutes a violation of article 4 (3) of the Covenant.

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

##### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether the case is admissible under the Optional Protocol.

7.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for purposes of article 5 (2) (a) of the Optional Protocol. 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>3</sup> Accordingly, the Committee considers that the examination of Mahmoud Boudjema's case by the Working Group on Enforced or Involuntary Disappearances does not render the communication inadmissible under this provision.

7.3 The Committee notes that the author alleges that remedies have been exhausted. It 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 notes that the author's mother repeatedly alerted the competent authorities, both judicial and administrative, to the disappearance of her husband, and that she was left facing silence on the part of the authorities. The Committee notes that the Taher court issued a decision concerning the case of Mahmoud Boudjema on 18 June 2005, but that the decision was a dismissal issued without justification or the possibility of appeal owing to its late notification. For its part, the State party has failed to provide any specific explanation in its comments responding to the case of Mahmoud Boudjema which would make it possible to conclude that an effective remedy is currently available. In addition, Ordinance No. 06-01 continues to be applied, despite the fact that the Committee recommended that it should 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.

7.4 The Committee notes that the author alleges violations that raise issues under articles 2 (3), 6 (1), 7, 9 (1-4), 10 (1) and 16 of the Covenant, read alone and in conjunction with article 2 (3), as well as under articles 17 and 23 (1). The Committee considers that these claims are sufficiently substantiated and that there are no obstacles to their admissibility. The Committee therefore proceeds to consider the communication on the merits in respect of the alleged violations of articles 6 (1), 7, 9 (1-4), 10 (1), 16, 17, 23 (1) and 2 (3) of the Covenant.

#### *Consideration of the merits*

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

8.2 The Committee notes that the State party has merely referred to its collective and general comments, which it 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 demands that the State party concern itself with the fate of every individual and treat every individual with respect for the inherent dignity of the human person.<sup>4</sup> Given that the amendments recommended by the

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<sup>3</sup> See, inter alia, communications No. 2098/2011, *Ammari v. Algeria*, Views adopted on 30 October 2014; No. 2026/2011, *Sassene v. Algeria*, Views adopted on 29 October 2014; No. 1791/2008, *Boudjemai v. Algeria*, Views adopted on 22 March 2013, para. 7.2; No. 1779/2008 (and Rev.1), *Mezine v. Algeria*, Views adopted on 25 October 2012, para. 7.2; and No. 1781/2008, *Djebrouni v. Algeria*, Views adopted on 31 October 2011, para. 7.2.

<sup>4</sup> See *Sassene v. Algeria*, para. 7.2; and *Ammari v. Algeria*, para. 8.2.



Committee have not been introduced, Ordinance No. 06-01 contributes, in the present case, to impunity and cannot be considered compatible with the provisions of the Covenant.<sup>5</sup>

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, according to which the burden of proof should not lie solely with 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>6</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>7</sup> 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 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 represent continuing violation of various rights recognized in the treaty.<sup>8</sup>

8.5 The Committee notes that Mahmoud Boudjema was seen for the last time on the night of 19 to 20 August 1996 when he was arrested at his home by soldiers of the people's national army. It notes that two persons affirmed that they were detained the same night with the victim and that the author and his family have since then gone without word of him. The Committee notes that the State party has produced no evidence to establish what happened to Mahmoud Boudjema and has never even confirmed his detention. The Committee recalls that, in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge 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.<sup>9</sup> In the present case, the Committee notes that the State party has produced no evidence to indicate that it fulfilled its obligation to protect the life of Mahmoud Boudjema. The Committee therefore finds that the State party has failed in its duty to protect Mahmoud Boudjema's life, in violation of article 6 (1) of the Covenant.

8.6 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, in which it recommends that States parties take steps to prohibit incommunicado detention. It notes, in the present case, that the author and Mahmoud Boudjema's family have never received any information on his fate or place of detention. The Committee therefore considers that it is possible that Mahmoud Boudjema, who disappeared on the night of 19 to 20 August 1996, is still being held incommunicado by the Algerian authorities. In the absence of any explanation from the State party, the Committee

<sup>5</sup> See *Ammari v. Algeria*, para. 8.2.

<sup>6</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>7</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>8</sup> See communications No. 2000/2010, *Katwal v. Nepal*, Views adopted on 1 April 2015, para. 11.3; No. 2134/2012, *Serna et al. v. Colombia*, Views adopted on 9 July 2015, para. 9.4; and No. 2259/2013, *El Boathi v. Algeria*, Views adopted on 17 March 2017, para. 7.4. See also general comment No. 6 (1982) on the right to life, para. 4: "States parties should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life. Furthermore, States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life."

<sup>9</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.

considers that this disappearance constitutes a violation of article 7 of the Covenant with regard to Mahmoud Boudjema.<sup>10</sup>

8.7 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>11</sup>

8.8 The Committee also takes note of the anguish and distress caused to the author by the disappearance of Mahmoud Boudjema. It considers that the facts before it disclose a violation with regard to him of article 7, read in conjunction with article 2 (3), of the Covenant.<sup>12</sup>

8.9 With regard to the complaint of violation of article 9 (1–4), the Committee takes note of the author’s allegations that Mahmoud Boudjema was arbitrarily arrested without a warrant and was not charged or brought before a court where he would have been able to challenge the legality 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 allegations.<sup>13</sup> The Committee therefore finds a violation of article 9 (1–4) with regard to Mahmoud Boudjema.<sup>14</sup>

8.10 The Committee is of the view that the intentional removal of a person from the protection of the law 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>15</sup> In the present case, the Committee notes that the State party has not furnished any convincing explanation concerning the fate or whereabouts of Mahmoud Boudjema, despite the inquiries made by his wife, and that when Mahmoud Boudjema was last seen he was in the custody of State officials. The Committee finds that Mahmoud Boudjema’s enforced disappearance more than 21 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.

8.11 With regard to the complaint of a violation of article 17, the Committee notes that the State party has not provided any justification or clarification as to the forced entry of soldiers into the family home of Mahmoud Boudjema in the middle of the night and without a warrant. The Committee concludes that the entry of officials into the family home of Mahmoud Boudjema in such circumstances constitutes unlawful interference with their home, in violation of article 17 of the Covenant.<sup>16</sup>

8.12 In the light of the foregoing, the Committee will not consider separately the claims in relation to the violation of article 23 (1) of the Covenant.

8.13 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>17</sup> It refers to its general comment No. 31 (2004) on the nature of the general legal obligation imposed

<sup>10</sup> See *Ammari v. Algeria*, para. 8.5; *Mezine v. Algeria*, para. 8.5; communication No. 1905/2009, *Khirani v. Algeria*, Views adopted on 26 March 2012 and corrigendum, 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>11</sup> See *Ammari v. Algeria*, para. 8.6.

<sup>12</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.

<sup>13</sup> See communication No. 2297/2013, *Chani v. Algeria*, Views adopted on 11 March 2016, para. 7.5.

<sup>14</sup> See, inter alia, *Mezine v. Algeria*, para. 8.7; *Khirani v. Algeria*, para. 7.7; and *Djebrouni v. Algeria*, para. 8.7.

<sup>15</sup> See communications No. 2164/2012, *Basnet v. Nepal*, Views adopted on 12 July 2016, para. 10.9; 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>16</sup> See *Mezine v. Algeria*, para. 8.10.

<sup>17</sup> See communication No. 2132/2012, *Kerouane v. Algeria*, Views adopted on 30 October 2014, para. 7.11.

on States parties to the Covenant, in which it states that a failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. In this case, the family of Mahmoud Boudjema reported his disappearance to the competent authorities; the State party did not carry out a thorough and effective investigation into his disappearance and the author's family received no information. Furthermore, the legal impossibility of applying to a judicial body since the promulgation of Ordinance No. 06-01 continues to deprive Mahmoud Boudjema, the author and his 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 articles 6 (1), 7, 9 and 16, with regard to Mahmoud Boudjema and of article 2 (3) read in conjunction with article 7 with regard to the author.

9. 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 (1-4), 16 and 17 of the Covenant as well as of article 2 (3), read in conjunction with articles 6 (1), 7, 9 (1-4), 16 and 17, with regard to Mahmoud Boudjema. It also finds a violation by the State party of articles 7 and 17 of the Covenant, read alone and in conjunction with article 2 (3), with regard to the author.

10. 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 in particular obliged to: (a) conduct an in-depth, thorough and impartial investigation into the disappearance of Mahmoud Boudjema and provide the author and his family with detailed information about the results of its investigation; (b) release Mahmoud Boudjema immediately if he is still being held incommunicado; (c) in the event that Mahmoud Boudjema is deceased, hand over his remains to his family; (d) prosecute, try and punish those responsible for the violations that have been committed; (e) provide adequate compensation to the author for the violations perpetrated against him, and to Mahmoud Boudjema, if he is alive; and (f) provide appropriate satisfaction for the author and his 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. To that end, the Committee is of the view that the State party should review its legislation in mind of its obligation under article 2 (2) and, in particular, repeal the provisions of Ordinance No. 06-01 that are incompatible with the Covenant, to ensure that the rights enshrined in the Covenant can be enjoyed fully in the State party.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not 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, 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.