



# 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. 3320/2019\*, \*\*

<i>Communication submitted by:</i>	Salah Drif and Khoukha Rafrat (represented by counsel, Nassera Dutour, of the Collectif des familles de disparu(e)s en Algérie)
<i>Alleged victims:</i>	The authors and Omar Drif (their son)
<i>State party:</i>	Algeria
<i>Date of communication:</i>	20 January 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 15 March 2019 (not issued in document form)
<i>Date of adoption of Views:</i>	... March 2022
<i>Subject matter:</i>	Enforced disappearance
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to an effective remedy; cruel, inhuman or degrading treatment or punishment; liberty and security of person; human dignity; recognition as a person before the law
<i>Articles of the Covenant:</i>	2 (2) and (3), 6, 7, 9, 10, 14 and 16
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2)

1.1 The authors of the communication are Salah Drif and his wife Khoukha Rafrat, both of Algerian nationality. They claim that their son, Omar Drif, born on 29 November 1968, also of Algerian nationality, was 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 authors further claim to be the victims of a violation of their rights under articles 2 (2) and (3), 7 and 14 of the Covenant. The Covenant and the Optional Protocol to the Covenant entered into force for the State party on 12 December 1989. The authors are represented by counsel, Nassera Dutour, of the Collectif des familles de disparu(e)s en Algérie.

\* Adopted by the Committee at its 134th session (28 February–25 March 2022).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V. J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Kobayyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberli.



1.2 On 4 July 2019, the Committee, acting through the Special Rapporteur on new communications and interim measures, decided not to consider the admissibility of the communication separately from the merits.

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

2.1 Omar Drif was single, worked in his carpentry shop in Kolea and lived with his family in Berbessa. On 29 January 1995, his brother, Allal Drif, was stopped by gendarmes and taken to the gendarmerie station in Berbessa.<sup>1</sup> On 9 June 1995, on his way home with four friends, Omar Drif was stopped by armed gendarmes in uniform travelling in official vehicles. They told him that they had been ordered to arrest him and bring him to the gendarmerie station. The four friends recognized among the officers the Chief of Brigade, B., and a member of the communal guard, A.S. Both men were well known among the locals because they were allegedly responsible for most of the disappearances that took place in the town at the time.

2.2 After being alerted to the incident, Khouka Rafrat, along with her daughter, went to the gendarmerie station in Berbessa to enquire about her son's arrest. The Chief of Brigade told her that Omar was indeed at the station, that someone had informed on him and that he would be released following an investigation. He was evasive as to the reasons for the arrest. Ms. Rafrat returned several times to the station but did not receive any further information. In 1996, the family heard a rumour that Omar was in a camp located in the south of the country. However, in 2011, the authors received information that Omar was still at the gendarmerie station in Berbessa.

2.3 The authors contacted the competent administrative and judicial authorities to find out why their son had been detained and what had become of him. On the administrative front, Ms. Rafrat began by sending two letters (on 28 and 31 August 1997) to the Ombudsman, who acknowledged receipt on 15 October 1997, noting that the file had been transmitted to the competent departments for further information and that she would be kept informed of the steps taken to respond to her request. In 1997, Salah Drif received another letter from the Ombudsman, acknowledging receipt of his letter concerning his family members and stating that he would be kept duly informed of developments.

2.4 On 3 January 1998, Ms. Rafrat wrote to the Minister of Justice. By letter dated 25 August 1998, she was summoned to the *wilaya* office on 28 October 1998 in connection with Omar's disappearance. On 24 August 1998 and 7 November 1998, the authors wrote two more letters to the Minister of Justice. On 30 August 1999, Ms. Rafrat sent a letter to the President, expressing fears for her remaining family, demanding to know the truth and requesting the authorities to genuinely search for her son. On 13 December 1999, Ms. Rafrat and the parents of several other disappeared persons signed a joint letter to the President. On 13 April 2003, Mr. Drif again appealed to the Minister of Justice, the Head of Government, the President and the National Advisory Commission for the Promotion and Protection of Human Rights. On 27 August 2006, Ms. Rafrat sent additional letters to the Minister of Justice, the Head of Government, the President, the National Advisory Commission for the Promotion and Protection of Human Rights and the Minister of the Interior. She reminded the authorities that she had been appealing to them for 10 years to find out her son's whereabouts, to no avail.

2.5 On 7 September 2006, the authors received a reply from the Head of Government, acknowledging receipt of the earlier letter, which had been transmitted to the National Advisory Commission for the Promotion and Protection of Human Rights. On 27 December 2006, the authors received another reply from the Office of the President, inviting them to go to the court nearest to their home to initiate the procedure to obtain compensation under Ordinance No. 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation. The authors categorically refused the compensation, which would have meant ending their efforts to uncover the truth about their son's fate.

2.6 On 13 March 2007, the authors appealed to the Head of Government and the President. On 11 May 2009, they sent another complaint to the President, the Minister of Justice and

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<sup>1</sup> A communication alleging his enforced disappearance has also been registered by the Committee.

the Minister of the Interior. On 12 June 2011, the authors again appealed to the President and the Minister of Justice, requesting the State to enforce their right to an effective investigation so that they could learn the reasons for their son's arrest and his true fate. In this letter, they referred to international instruments for the promotion and protection of human rights, including the Covenant and the African Charter on Human and Peoples' Rights. The authors did not receive a reply to these appeals.

2.7 As for judicial remedies, on 17 November 1996, Mr. Drif was summoned by the criminal investigation service of Tipaza regarding his son's disappearance. On 4 March 1999, Ms. Rafrac received a summons from the military court of Blida to appear on 19 April 1999. On an unspecified date, the authors contacted the public prosecutor of the military court of Blida to enquire about the status of the investigation, noting that they had been interviewed by the gendarmerie at its request but had heard nothing since.

2.8 On 13 September 2004, in the face of the authorities' inaction, Mr. Drif lodged another complaint with the investigating judge at the court of Kolea against the two members of the communal guard who had arrested his son. However, no action was taken. On 27 August 2006, Ms. Rafrac contacted the public prosecutor of the court of Kolea. On 21 February 2007, she reiterated her request to the public prosecutor for an investigation into her son's fate. No action was taken on these complaints. On 11 May 2009, the authors filed another complaint with the public prosecutor of the court of Kolea, once again requesting that an investigation be launched. They received two replies, one of which was to inform them that the file had been transmitted to the National Advisory Commission for the Promotion and Protection of Human Rights and that this body was not, however, competent to initiate an investigation. Subsequently, the authors turned down the compensation again and demanded to know the truth.

2.9 On 12 June 2011, Ms. Rafrac lodged a complaint with the public prosecutor of the court of Kolea, requesting the opening of an investigation. On an unspecified date, the authors also appealed to the public prosecutor of the military court of Blida, explaining that they had filed a complaint with the ordinary court of Kolea, but that, up to that point, no action had been taken on their case.

2.10 Omar Drif's case was also submitted to the Working Group on Enforced or Involuntary Disappearances on 25 June 2009. Seven years after it was taken up by the Working Group, the Algerian authorities had still not shed light on the case.<sup>2</sup>

2.11 Despite the authors' best efforts, no investigation has been undertaken by the competent State authorities. The authors point out that it is now legally impossible for them to invoke judicial proceedings after the issuance of Ordinance No. 06-01. Domestic remedies, which had already proved futile and ineffective, have thus become unavailable. Indeed, according to the Charter for Peace and National Reconciliation, "reprehensible acts on the part of agents of the State, which have been punished by law whenever they have been proved, cannot be used as a pretext to discredit the security forces as a whole, who were doing their duty for their country with the support of its citizens".

2.12 The authors argue that, since Ordinance No. 06-01 prohibits recourse to judicial proceedings, on pain of criminal prosecution, victims are relieved of any obligation to exhaust domestic remedies. Article 45 of the Ordinance in fact prohibits any complaint of disappearance or other offences, by providing that "no individual or class action may be taken against members of any branch of the defence and security forces of the Republic for actions carried out to protect persons and property, safeguard the nation and preserve the institutions of the People's Democratic Republic of Algeria". By virtue of this provision, any allegation or complaint must be declared inadmissible by the competent judicial authority. Furthermore, article 46 of the Ordinance establishes that "anyone who, through his or her spoken or written statements or any other act, uses or makes use of the wounds caused by the national tragedy to undermine the institutions of the People's Democratic Republic of Algeria, weaken the State, impugn the honour of its agents who served it with dignity or tarnish the image of Algeria abroad shall be liable to a term of imprisonment of 3 to 5 years and a fine of 250,000 to 500,000 Algerian dinars. Criminal proceedings shall be automatically initiated by the

<sup>2</sup> The case remains pending before the Working Group on Enforced or Involuntary Disappearances.

public prosecutor's office. The penalty established in the present article shall be doubled for repeat offences."

### **Complaint**

3.1 The authors request the Committee to find that the State party has violated the rights of Omar Drif under articles 2 (2) and (3), 6, 7, 9, 10 and 16 of the Covenant and their own rights under articles 2 (2) and (3), 7 and 14 of the Covenant.

3.2 The authors claim that their son was a victim of enforced disappearance. They argue 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 cruel, inhuman or degrading treatment or punishment and the right to liberty and security of person.

3.3 The authors recall the developments in the Committee's jurisprudence regarding enforced disappearances and consider that the mere risk of loss of a person's life in the context of enforced disappearance is enough to justify a finding of a direct violation of article 6 of the Covenant. They also recall the facts of their son's disappearance and consider that, since 21 years have elapsed and in the absence of any information, there are strong reasons to believe that he died in detention while he was in the care of the authorities. In the absence of a thorough investigation into the disappearance of Omar Drif, the authors consider that the State party has failed in its obligation to protect his right to life and to take steps to investigate what happened to him, in violation of article 6 (1) of the Covenant.

3.4 The authors recall the circumstances surrounding their son's disappearance, namely the total lack of information about his detention and his state of health and the lack of communication with his family and the outside world. They recall that prolonged arbitrary detention increases the risk of torture and cruel, inhuman or degrading treatment. Referring to the Committee's jurisprudence, the authors stress that the anguish, uncertainty and distress caused by Omar Drif's disappearance and by the authorities urging them to undertake the compensation procedure under the Charter for Peace and National Reconciliation constitute a form of cruel, inhuman or degrading treatment for his family. Furthermore, the fact that one of Omar Drif's brothers also disappeared and the authorities did not at any point attempt to assuage the resulting suffering by conducting effective investigations to shed light on the reasons for their two sons' arrest or on the fate that has befallen them is increasing the authors' pain, frustration and deep enduring anguish. Accordingly, the authors allege that the State party is responsible for a violation of article 7 of the Covenant in relation to them and to Omar Drif.

3.5 Taking into account that Omar Drif was detained incommunicado without access to a lawyer and without being informed of the reasons for his arrest or the charges against him, that his detention was not mentioned in police custody registers and that there is no official information as to his whereabouts or fate, the authors claim that he was deprived of his right to liberty and security of person and that he was not able to bring proceedings before a court. They therefore consider that Omar Drif was deprived of the guarantees set out in article 9 of the Covenant, in particular the right to an effective remedy, amounting to a violation of his rights under that article.

3.6 The authors also argue that, in the absence of any investigation by the Algerian authorities, Omar Drif was deprived of his liberty and was not treated with humanity and dignity, in violation of his rights under article 10 of the Covenant.

3.7 Recalling the provisions of article 14 of the Covenant, as well as paragraph 9 of the Committee's general comment No. 32 (2007), the authors claim that all the steps they have taken with the judicial and other authorities have been unsuccessful. Moreover, the Charter for Peace and National Reconciliation and article 45 of Ordinance No. 06-01 are an impediment to any legal action against State agents, preventing the authors from having their case heard. The State party has thus violated article 14 of the Covenant with regard to them.

3.8 The authors then recall the provisions of article 16 of the Covenant and the Committee's established jurisprudence, according to which the intentional removal of a person from the protection of the law for a prolonged period of time may constitute a refusal

of recognition as a person before the law if the victim was in the hands of the State authorities when last seen and if the efforts of relatives to obtain access to effective remedies, including judicial remedies, have been systematically impeded. On this point, they refer to the Committee's concluding observations on the second periodic report of Algeria under article 40 of the Covenant,<sup>3</sup> in which the Committee established that holding incommunicado disappeared individuals who are still alive is a violation of the right to recognition as persons before the law, enshrined in article 16 of the Covenant. In consequence, they assert that, in keeping Omar Drif in detention without officially informing his family and friends, the Algerian authorities denied him the protection of the law and deprived him of his right to recognition as a person before the law, in violation of article 16 of the Covenant.

3.9 The authors consider that Ordinance No. 06-01 constitutes a violation of the general obligation assumed by the State party under article 2 (2) of the Covenant, in that this provision also implies a negative obligation for States parties to refrain from adopting measures that are contrary to the Covenant. In adopting the Ordinance, in particular article 45 thereof, the State party adopted a legislative measure that prevents the enjoyment of rights recognized under the Covenant,<sup>4</sup> particularly the right to have access to an effective remedy against violations of human rights. Since the promulgation of this Ordinance, the authors have been prevented from taking legal action. They consider that a breach, by act or omission, of the obligation imposed by article 2 (2) of the Covenant may engage the international responsibility of the State party.<sup>5</sup> They claim that despite all their efforts since the Charter for Peace and National Reconciliation and its implementing legislation came into force, their complaints have gone unanswered. They therefore claim to be victims of this legislative provision that violates article 2 (2) of the Covenant.

3.10 The authors add that the provisions of Ordinance No. 06-01 are contrary to article 2 (3) of the Covenant, since they have the effect of preventing any criminal proceedings against alleged perpetrators of enforced disappearance when such persons are agents of the State. The effect of this Ordinance is to grant amnesty for crimes committed in the previous decade, including the most serious crimes such as enforced disappearance. Moreover, the law prohibits, subject to a penalty of imprisonment, the use of the justice system to establish the fate of victims.<sup>6</sup> The steps taken by the authors with the Algerian authorities before and after the Ordinance's adoption proved futile, as no response was given to them about the fate of Omar Drif. This refusal hinders the effectiveness of the remedies sought by his family. Article 2 (3) of the Covenant requires that States parties make reparation to individuals whose Covenant rights have been violated.<sup>7</sup> Articles 27 to 39 of Ordinance No. 06-01 provide only for financial compensation, subject to the issuance of a declaration of death following an unsuccessful investigation, and article 38 excludes any other form of reparation. In practice, however, no investigation is carried out, either into the fate of the disappeared person or into those responsible for the disappearance. The authors recall that the Committee has considered that the right to an effective remedy necessarily includes the right to adequate reparation and the right to the truth, and it has recommended that the State party should undertake to ensure that disappeared persons and/or their families have access to an effective remedy and that proper follow-up is assured, while ensuring respect for the right to compensation and the fullest possible redress.<sup>8</sup> According to the authors, the State party has, therefore, violated article 2 (3), read in conjunction with article 7 of the Covenant, with regard to them.

3.11 The authors ask that the Committee request the State party to order independent and impartial investigations with a view to: (a) finding Omar Drif and fulfilling the State party's commitment under article 2 (3) of the Covenant; (b) bringing the instigators and perpetrators of this enforced disappearance before the competent civil authorities to face prosecution in line with article 2 (3) of the Covenant; and (c) ensuring that Omar Drif, if he is still alive, and his family have access to adequate, effective and prompt reparation for the harm suffered, in

<sup>3</sup> CCPR/C/79/Add.95, para. 10.

<sup>4</sup> See, inter alia, the concurring individual opinion of Fabián Salvioli in the case of *Djebbar and Chihoub v. Algeria* (CCPR/C/103/D/1811/2008).

<sup>5</sup> Human Rights Committee, general comment No. 31 (2004), para. 4.

<sup>6</sup> CCPR/C/DZA/CO/3, paras. 7–8.

<sup>7</sup> Human Rights Committee, general comment No. 31 (2004), para. 16.

<sup>8</sup> CCPR/C/DZA/CO/3, para. 12.

accordance with articles 2 (3) and 9 of the Covenant, including appropriate compensation commensurate with the gravity of the violation and full and complete rehabilitation, with guarantees of non-repetition. Lastly, they ask the Committee to urge the Algerian authorities to repeal articles 27 to 39, 45 and 46 of Ordinance No. 06-01.

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

4. On 2 April 2019, the State party invited the Committee to refer to the background memorandum of the Government of Algeria on handling the issue of disappearances in the light of the implementation of the Charter for Peace and National Reconciliation. As the Committee refused to consider the admissibility of the complaint separately from the merits, on 16 December 2020 the State party again invited the Committee to refer to the background memorandum, challenging the admissibility before the Committee of communications relating to the implementation of the Charter for Peace and National Reconciliation and, consequently, inviting it not to consider the merits.

#### **Authors' comments on the State party's observations**

5.1 On 30 June 2019, the authors submitted their comments on the State party's observations regarding admissibility. The authors emphasize that the 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, thereby demonstrating the Algerian authorities' disregard and disdain for the current procedure before the Committee. They also emphasize that such observations, which date back to July 2009, are outdated.

5.2 Recalling that no remedy has led to the initiation of a thorough investigation or criminal proceedings and that the Algerian authorities have not provided any tangible evidence suggesting that effective searches were conducted to locate Omar Drif and to identify those responsible for his disappearance, the authors conclude that domestic remedies have been exhausted and that the complaint should be considered admissible by the Committee.

5.3 Referring to the Committee's jurisprudence that the Charter for Peace and National Reconciliation cannot be invoked against individuals submitting individual communications, the authors recall that the provisions of the Charter do not in any way represent adequate handling of the cases of the missing, which would mean respect for the right to truth, justice and full redress.

#### **Lack of cooperation by the State party**

6. The Committee recalls that on 2 April 2019 the State party challenged the admissibility of the communication, referring to the background memorandum on handling the issue of disappearances in the light of the implementation of the Charter for Peace and National Reconciliation. On 4 July 2019 and 3 September 2020, the State party was invited to submit its observations on the merits of the communication. The Committee notes that it has not received any response and regrets the State party's failure to cooperate by sharing its observations on the present complaint. 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 whatever information is available to it.<sup>9</sup>

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<sup>9</sup> See, inter alia, *Mezine v. Algeria* (CCPR/C/106/D/1779/2008), para. 8.3; *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.3; *Dafar v. Algeria* (CCPR/C/130/D/2580/2015), para. 4; and *Rsiwi v. Algeria* (CCPR/C/130/D/2843/2016), para. 6.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

7.2 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. It recalls, however, that the special procedures and mechanisms of the Human Rights Council do not generally constitute a procedure of international investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol.<sup>10</sup> Accordingly, the Committee finds that the examination of the case of Omar Drif 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 authors claim that they have exhausted all available remedies and that, by way of disputing the admissibility of the communication, the State party has simply referred to the background memorandum of the Government of Algeria on handling the issue of disappearances in the light of the Charter for Peace and National Reconciliation. In this regard, the Committee recalls that it has repeatedly expressed its concern that, despite many requests, the State party continued to refer systematically to a general document (the “aide-memoire”), without responding specifically to the claims made by authors of communications.<sup>11</sup> The Committee has therefore called on the State party, as a matter of urgency, to cooperate with it in good faith under the individual communications procedure by ceasing to refer to the “aide-memoire” and by responding individually and with specifics to the claims made by authors of communications.

7.4 The Committee also recalls that the State party has not only a duty to carry out thorough investigations of alleged violations of human rights brought to the attention of its authorities, particularly violations of the right to life, but also a duty to prosecute, try and punish anyone held to be responsible for such violations.<sup>12</sup> In the present case, the Committee notes that, although the authors brought the enforced disappearance of their son to the attention of the competent authorities on many occasions, the State party has not undertaken any investigations into this serious allegation. The State party has also failed to provide any specific explanation in its comments responding to the case of Omar Drif that would make it possible to conclude that an effective remedy is currently available, given that Ordinance No. 06-01, which effectively limits the scope of application of the Covenant, continues to be applied, despite the Committee’s recommendations to bring it into line with the Covenant.<sup>13</sup> In the circumstances, the Committee finds that it is not precluded from considering the communication under article 5 (2) (b) of the Optional Protocol.

7.5 Furthermore, since submitting a communication five years after the exhaustion of domestic remedies can amount to an abuse of the right of submission – and even though the State party has not raised this point in the present case – the Committee recalls that the

<sup>10</sup> See, inter alia, *Souaiene and Souaiene v. Algeria* (CCPR/C/128/D/3082/2017), para. 7.2; *Tharu et al. v. Nepal* (CCPR/C/114/D/2038/2011), para. 9.2; *Ammari v. Algeria* (CCPR/C/112/D/2098/2011), para. 7.2; *Mihoubi v. Algeria* (CCPR/C/109/D/1874/2009), para. 6.2; and *Al Daquel et al. v. Libya* (CCPR/C/111/D/1882/2009), para. 5.2.

<sup>11</sup> *Rsiwi v. Algeria*, para. 7.3; *Berkaoui v. Algeria* (CCPR/C/130/D/2639/2015), para. 7.3; *Souaiene and Souaiene v. Algeria*, para. 7.3; *Bendjael and Bendjael v. Algeria* (CCPR/C/128/D/2893/2016), para. 7.3; *Cherguit v. Algeria* (CCPR/C/128/D/2828/2016), para. 6.3; and *Habouchi v. Algeria* (CCPR/C/128/D/2819/2016), para. 7.3.

<sup>12</sup> *Boudjemai v. Algeria* (CCPR/C/107/D/1791/2008), para. 7.4; *Mezine v. Algeria*, para. 7.4; *Berzig v. Algeria* (CCPR/C/103/D/1781/2008), para. 7.4; and *Khirani v. Algeria* (CCPR/C/104/D/1905/2009 and *Corr.1*), para. 6.4.

<sup>13</sup> *Rsiwi v. Algeria*, para. 7.4; *Berkaoui v. Algeria*, para. 7.4; *Souaiene and Souaiene v. Algeria*, para. 7.4; *Bendjael and Bendjael v. Algeria*, para. 7.4; *Cherguit v. Algeria*, para. 6.4; and *Habouchi v. Algeria*, para. 7.4.

continuous nature of enforced disappearance implies a continuous obligation to investigate such cases, which in this case is made impossible by Ordinance No. 06-01 and its effects.<sup>14</sup> The Committee therefore does not consider that, in the special circumstances of the case, the present communication would constitute an abuse of the right of submission.

7.6 The Committee notes that the authors have also claimed a separate violation of their rights under article 2 (2) and (3) of the Covenant. Recalling its jurisprudence according to which the provisions of article 2 lay down general obligations for States parties and cannot, by themselves, give rise to a separate claim under the Optional Protocol, as they can be invoked only in conjunction with other substantive articles of the Covenant,<sup>15</sup> the Committee considers the authors' claims under article 2 (2) and (3) of the Covenant, invoked separately, to be inadmissible under article 3 of the Optional Protocol.<sup>16</sup>

7.7 The Committee considers that the authors have sufficiently substantiated their other allegations for the purposes of admissibility and proceeds with its consideration of the merits of the claims made under articles 6 (1), 7, 9, 10, 14 and 16 of the Covenant, read alone and in conjunction with article 2 (3).

#### *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 connection with 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<sup>17</sup> and recalls that the State party may not use the provisions of the Charter against persons who invoke provisions of the Covenant or who have submitted, or may submit, communications to the Committee.<sup>18</sup> Ordinance No. 06-01, without the amendments recommended by the Committee, promotes impunity in the present case and cannot, in its current form, be considered compatible with the Covenant.<sup>19</sup>

8.3 The Committee notes that the State party has not replied to the authors' 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>20</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 whatever information is available to it.<sup>21</sup> In the absence of any explanations from the State party in this respect, due weight must be given to the authors' allegations, provided they have been sufficiently substantiated.

<sup>14</sup> *Berkaoui v. Algeria*, para. 7.5; *Dafar v. Algeria*, para. 5.4; and *Rsiwi v. Algeria*, para. 7.6.

<sup>15</sup> See, e.g., *H.E.A.K. v. Denmark* (CCPR/C/114/D/2343/2014), para. 7.4; *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.4; *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4; and *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5.

<sup>16</sup> *Souaiene and Souaiene v. Algeria*, para. 7.5.

<sup>17</sup> See, inter alia, *Mezine v. Algeria*, para. 8.2; *Berzig v. Algeria*, para. 8.2; and *Boudjemai v. Algeria*, para. 8.2.

<sup>18</sup> The Covenant requires the State party to concern itself with the fate of every individual and to treat every individual with respect for the inherent dignity of the human person.

<sup>19</sup> *Zaier v. Algeria* (CCPR/C/112/D/2026/2011), para. 7.2; *Dafar v. Algeria*, para. 6.4; and *Ammari v. Algeria*, para. 8.2.

<sup>20</sup> See, inter alia, *Ammari v. Algeria*, para. 8.3; *Mezine v. Algeria*, para. 8.3; *El Abani v. Libyan Arab Jamahiriya* (CCPR/C/99/D/1640/2007), para. 7.4; and *Berzig v. Algeria*, para. 8.3.

<sup>21</sup> *Mezine v. Algeria*, para. 8.3; and *Medjnoune v. Algeria*, para. 8.3.

8.4 The Committee recalls that, while the term “enforced disappearance” does not appear expressly in any article of the Covenant, enforced disappearance constitutes a single, integrated group of acts that represents a continuing violation of various rights recognized in that treaty, including the right to life, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment and the right to liberty and security of person.<sup>22</sup>

8.5 The Committee notes that the authors last saw their son before 9 June 1995, the date on which he was heading home with four friends. His friends recognized two officers of the Berbessa gendarmerie and, when Ms. Rafrat went to the gendarmerie station to request information about her son’s arrest, one of those two officers, who was the Chief of Brigade, confirmed that Omar Drif was indeed at the station. The Committee notes that the State party has produced no evidence to establish what happened to Omar Drif. It 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>23</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 Omar Drif. The Committee therefore finds that the State party has failed in its duty to protect Omar Drif’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), in which it recommends that States parties take steps to prohibit incommunicado detention. It notes in the present case that, after receiving news from the Chief of Brigade who confirmed that their son was at the Berbessa gendarmerie station, the authors received no further official information about his fate or place of detention, despite several successive requests made to the State authorities. The Committee therefore considers that it is possible that Omar Drif, who disappeared on 9 June 1995, is still being held incommunicado by the Algerian authorities. In the absence of any explanation from the State party, the Committee considers that the disappearance of Omar Drif constitutes a violation of article 7 of the Covenant with respect to him.<sup>24</sup>

8.7 In view of the above, the Committee will not consider separately the claims related to the violation of article 10 of the Covenant.<sup>25</sup>

8.8 With regard to the alleged violation of article 9 of the Covenant, the Committee takes note of the authors’ allegations that Omar Drif was arbitrarily arrested, without a warrant, was not formally charged and was not brought before a judicial authority, which would have enabled him to challenge the lawfulness of his detention. In the absence of any information from the State party on this subject, the Committee considers that due weight must be given to the authors’ allegations<sup>26</sup> and therefore finds a violation of article 9 of the Covenant in respect of Omar Drif.<sup>27</sup>

8.9 The Committee is of the view that the intentional removal of a person from the protection of the law constitutes a refusal of the right to recognition as a person before the law, in particular if the efforts of his or her relatives to obtain access to effective remedies

<sup>22</sup> *Katwal v. Nepal* (CCPR/C/113/D/2000/2010), para. 11.3; *Serna et al. v. Colombia* (CCPR/C/114/D/2134/2012), para. 9.4; and *El Boathi v. Algeria* (CCPR/C/119/D/2259/2013), para. 7.4. See also Human Rights Committee, general comment No. 36 (2018), para. 58.

<sup>23</sup> *Louddi v. Algeria* (CCPR/C/112/D/2117/2011), para. 7.4; *Mezine v. Algeria*, para. 8.4; and *Boudjemai v. Algeria*, para. 8.4. See also Human Rights Committee general comment No. 36 (2018), para. 58.

<sup>24</sup> *Cherguit v. Algeria*, para. 7.6; *Bendjael and Bendjael v. Algeria*, para. 8.6; *Braih v. Algeria* (CCPR/C/128/D/2924/2016), para. 6.5; *Berzig v. Algeria*, para. 8.5; and *El Alwani v. Libyan Arab Jamahiriya* (CCPR/C/90/D/1295/2004), para. 6.5.

<sup>25</sup> *Ammari v. Algeria*, para. 8.6; *Berkaoui v. Algeria*, para. 8.7; *Dafar v. Algeria*, para. 6.7; and *Rsiwi v. Algeria*, para. 8.7.

<sup>26</sup> *Chani v. Algeria* (CCPR/C/116/D/2297/2013), para. 7.5.

<sup>27</sup> See, inter alia, *Mezine v. Algeria*, para. 8.7; *Khirani et al. v. Algeria*, para. 7.7; and *Berzig v. Algeria*, para. 8.7.

have been systematically impeded.<sup>28</sup> In the present case, the Committee notes that the State party has not furnished any explanation concerning the fate or whereabouts of Omar Drif, despite the steps taken by his relatives and the fact that, when he was last seen, Omar Drif was in the hands of the authorities. The Committee finds that Omar Drif's enforced disappearance more than 26 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.

8.10 The Committee also takes note of the anguish and distress caused to the authors by the disappearance, over 26 years ago, of Omar Drif. The Committee therefore considers that the facts before it reveal a violation of article 7 of the Covenant with regard to the authors.<sup>29</sup>

8.11 Lastly, the Committee notes that, although the authors have not expressly invoked a violation of article 2 (3), read in conjunction with articles 6, 7, 9 and 16 of the Covenant, they refer to the obligation imposed on States parties by that provision to ensure that everyone has accessible, effective and enforceable remedies for asserting the rights guaranteed by the Covenant.<sup>30</sup> The Committee recalls the importance it attaches to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of violations of the rights guaranteed under the Covenant.<sup>31</sup> It recalls its general comment No. 31 (2004), in which it states, in paragraph 15, that failure by a State party to investigate alleged violations could in and of itself give rise to a separate breach of the Covenant.

8.12 In the present case, the authors have repeatedly alerted the competent authorities to the disappearance of their son without the State party conducting an investigation into the disappearance and without the authors' being informed of Omar Drif's fate. Furthermore, the legal impossibility of applying to a judicial body since the promulgation of Ordinance No. 06-01 continues to deprive Omar Drif and the authors 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.<sup>32</sup> The Committee finds that the facts before it reveal a violation of article 2 (3), read in conjunction with articles 6, 7, 9 and 16 of the Covenant, with regard to Omar Drif and of article 2 (3), read in conjunction with article 7 of the Covenant, with regard to the authors.

8.13 In view of the above, the Committee will not consider separately the claims related to the violation of article 14 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses violations by the State party of articles 6, 7, 9 and 16 of the Covenant, read alone and in conjunction with articles article 2 (3), with regard to Omar Drif. It also finds a violation by the State party of article 7, read alone and in conjunction with article 2 (3) of the Covenant, in respect of the authors.

10. Pursuant to article 2 (3) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is obliged, *inter alia*: (a) to conduct a prompt, effective, thorough, independent, impartial and transparent investigation into the disappearance of Omar Drif and provide the authors with detailed information about the results of its investigation; (b) to release Omar Drif immediately if he is still being held incommunicado; (c) in the event that Omar Drif is deceased, to hand over his remains to his family in a dignified manner, in accordance with the cultural norms and customs of the victims; (d) to prosecute, try and punish those responsible for the violations in a way that is commensurate with the gravity of the violations; and (e) to provide the authors and Omar Drif, if he is alive, with adequate compensation and

<sup>28</sup> *Basnet v. Nepal* (CCPR/C/117/D/2164/2012), para. 10.9; *Tharu et al. v. Nepal*, para. 10.9; and *Serna et al. v. Colombia*, para. 9.5.

<sup>29</sup> *Mezine v. Algeria*, para. 8.6; *Khirani et al. v. Algeria*, para. 7.6; *Berzig v. Algeria*, para. 8.6; *El Abani v. Libyan Arab Jamahiriya*, para. 7.5; and *El Hassy v. Libyan Arab Jamahiriya* (CCPR/C/91/D/1422/2005), para. 6.11.

<sup>30</sup> *Cherguit v. Algeria*, para. 7.13; and *Souaiene and Souaiene v. Algeria*, para. 8.12.

<sup>31</sup> *Allioua and Kerouane v. Algeria* (CCPR/C/112/D/2132/2012), para. 7.11.

<sup>32</sup> CCPR/C/DZA/CO/3, para. 7.

access to any medical and psychological treatment they may need. In addition, the State party is under an obligation to take steps to prevent similar violations in the future and to ensure that it does not impede enjoyment of the right to an effective remedy for such serious violations as torture, extrajudicial execution and enforced disappearance. To that end, the Committee is of the view that the State party should review its legislation in accordance with its obligation under article 2 (2) of the Covenant 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 or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and 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 present Views. The State party is also requested to publish the present Views and to have them widely disseminated in its official languages.

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