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Communication No. 2132/2012

Views adopted by the Committee at its 112th session (7–31 October 2014)

<i>Submitted by:</i>	Kamela Allioua and Fatima Zohra Kerouane (represented by Philippe Grant of the Swiss organization Track Impunity Always (TRIAL))
<i>Alleged victims:</i>	Adel, Tarek and Mohamed Kerouane (grandsons and brothers of the authors) and the authors themselves
<i>State party:</i>	Algeria
<i>Date of communication:</i>	16 February 2012 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 28 February 2012 (not issued in document form)
<i>Date of adoption of Views:</i>	30 October 2014
<i>Subject matter:</i>	Enforced disappearance
<i>Substantive issues:</i>	Right to an effective remedy, right to life, prohibition of torture and cruel or inhuman treatment, 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 family life and right to protection for minors
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	Articles 2 (para. 3), 6 (para. 1), 7, 9 (paras. 1–4), 10 (paras. 1–2), 16, 23 (para. 1) and 24 (para. 1)
<i>Article of the Optional Protocol:</i>	Article 5 (para. 2 (b))

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (112th session)

concerning

Communication No. 2132/2012*

<i>Submitted by:</i>	Kamela Allioua and Fatima Zohra Kerouane (represented by Philippe Grant of the Swiss organization Track Impunity Always (TRIAL))
<i>Alleged victim:</i>	Adel, Tarek and Mohamed Kerouane (grandsons and brothers of the authors) and the authors themselves
<i>State party:</i>	Algeria
<i>Date of communication:</i>	16 February 2012 (initial submission)

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

Meeting on 30 October 2014,

Having concluded its consideration of communication No. 2132/2012 submitted by Kamela Allioua and Fatima Zohra Kerouane under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts the following:

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

1.1 The authors of the communication, which is dated 16 February 2012, are Kamela Allioua, an Algerian national born on 9 November 1925, and Fatima Zohra Kerouane, born on 5 October 1982. They claim that their grandsons and brothers, Adel Kerouane, born on 11 October 1974, Tarek Kerouane, born on 3 June 1977 and Mohamed Kerouane, born on 12 August 1980, all Algerian nationals, are victims of violations by the State party of articles 6 (para. 1), 7, 9, 10 (para. 1), 16 and 23 (para. 1) of the Covenant, read alone and in conjunction with article 2 (para. 3), and of articles 10 (para. 2) and 24 (para. 1), in respect

* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Christine Chanet, Ahmad Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Gerald L. Neuman, Sir Nigel Rodley, Fabián Omar Salvioli, Dheerujall B. Seetulsingh, Anja Seibert-Föhr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.

In accordance with article 90 of the Committee's rules of procedure, Lazhari Bouzid did not participate in the consideration of the communication.

of Tarek and Mohamed. They also claim that they themselves are victims of violations of the rights guaranteed under articles 7 and 23 (para. 1), read alone and in conjunction with article 2 (para. 3). They are represented by Philippe Grant of the organization TRIAL.

1.2 On 28 February 2012, the Committee, through its Special Rapporteur on new communications and interim measures, decided to grant the protection measures requested by the authors and asked the State party to refrain from invoking its national legislation, and specifically Ordinance No. 06-01 of 27 February 2006 on the implementation of the Charter for Peace and National Reconciliation, against the authors and their family members on the grounds of the present communication.

The facts as presented by the authors

2.1 On 12 April 1994 Adel Kerouane and two accomplices attempted a burglary. Surprised by security officials, they fled the scene. In the course of the arrest, the security officials opened fire, killing the two accomplices. Adel Kerouane was taken to hospital with a bullet wound to the leg and remained there for around two weeks. His father came to visit him three times. When he came the fourth time, however, he found that Adel was no longer in the hospital. A member of the hospital staff told him that he had been taken away by the security services but was unable to say what had become of him.

2.2 Tarek Kerouane, aged 16, was stopped by law enforcement officials on 20 May 1994 on his way home from school. The next day he was taken home by some 20 uniformed and masked police officers and two plain clothes police officers. His uncle, who lives in the same house, tried to approach the car where his nephew was being held, but the officials stopped him. Their home was searched but nothing incriminating was found. The next day Kamela Allioua, Tarek's grandmother and an author of the complaint, tried to find out what had happened to him, without success. She then went to the military security services at the Belle-Vue barracks, where an official told her that she would have to wait two weeks to find out where Tarek was. Two weeks later the author went back. The official made a phone call and she heard part of the conversation and realized that he was speaking to an official at Coudiat prison, who confirmed that Tarek was being held there. After the call the official merely told the author that Tarek was not being held at the barracks, but did not say where he actually was.

2.3 At the family's request, a visiting permit was issued on 3 July 1994 by the investigating judge of the special court of Constantine, stating that Adel and Tarek Kerouane were "under arrest at Constantine 25 prison". However, on the day of the visit, the prison guards at Constantine told the mother and grandmother of the missing persons that they were not being held there. Another visiting permit was issued for the same prison on 28 July 1994. The prison staff again turned Adel and Tarek Kerouane's mother and grandmother away, and behaved in a threatening manner towards them. The prison guards told them that it would be in their interests not to come back because they would not want to behave unpleasantly to women.

2.4 Mohamed Kerouane, aged 15, was arrested on 22 February 1996, together with a friend. The friend, who was released a month later, told the Kerouane family that he and Mohamed had been arrested in the street quite without warning, and detained by officials of the Hamma gendarmerie. A gendarmerie officer told the family that "some people came for him" while he was detained, but did not say who these people were. Three months after the arrest, the family received information, corroborated by several people, that Mohamed's body had been recognized as one of a number piled at the side of a road. Shortly afterwards a friend of the family said they had seen the body at the mortuary. It was lying on the ground alongside several other bodies. All of them were wearing shoes without laces and trousers without belts, which, according to the authors, could mean they had been in prison. According to the friend, Mohamed's head and body bore the marks of torture and ill-

treatment. The family have never been able to see the body, however, or verify Mohamed's death, and do not know where he is buried.

2.5 In a decision of 6 June 1995, the Indictment Division of the Constantine court charged Adel and Tarek Kerouane with premeditated murder and membership of a terrorist group, among other offences. The decision states that "the suspects are still at large despite the call for their arrest". Following this decision, the Kerouane family were notified that Tarek Kerouane had been summoned to a hearing on 20 June 1995 at the Indictment Division of the Constantine court to hear the charges against him. Despite the fact that Tarek was not present at the 20 June 1995 hearing, having disappeared on 20 May 1994, the Constantine court decided at that hearing to refer the case for trial in the criminal court. Another summons was sent to the family for Adel Kerouane to attend a hearing on 4 June 1996 at the Indictment Division of the Constantine court. In the absence of the person concerned, who had disappeared on 12 April 1994, the Indictment Division decided on 18 June 1996 to open a further investigation on charges of endangering State security and taking up arms against the institutions of the State.

2.6 The family, and in particular the authors of the communication, have been unremitting in their efforts to shed light on the disappearance of the three Kerouane brothers. Despite their numerous requests to the various authorities, including army barracks and police and gendarmerie stations in the area, and to the Constantine prosecutor's office, the family's efforts have been fruitless.

2.7 On 6 June 1995 the grandmother of Adel and Tarek Kerouane, Kamela Allioua, sent a written request to the State prosecutor at the Constantine court for information on the fate of her grandson, whereupon she was summoned to the security headquarters of the *wilaya* of Constantine by a police officer from the Directorate-General of National Security. On 23 July 1995 Kamela Allioua was informed by the Directorate-General that "the inquiries had yielded no results", despite the fact that criminal proceedings had been brought against Adel and Tarek Kerouane in the meantime. It has not been possible to establish what form these inquiries took.

2.8 Following Mohamed's disappearance, and still with no news of Adel or Tarek, the victims' mother, Akila Djama (Kerouane by marriage), went to the *wilaya* offices in Constantine on 9 September 1998 to try to find out what had happened to her missing children. On 6 April 1999 she was summoned to the investigation section at the gendarmerie brigade of the *wilaya* of Constantine and questioned about the circumstances of the three disappearances. She received a second summons on 12 April 1999 from the investigating judge at the Constantine court. After another round of questioning on the circumstances of her three sons' disappearance, on 4 July 1999, it was clear to the mother that the authorities had taken no action at all on her requests. On 17 November 1999 she received a letter from the Director-General of Collective Freedoms and Legal Affairs of the Ministry of the Interior, stating that Adel was "wanted by the security services for obstructing the law".

2.9 Having been unable to obtain any information on the fate of the disappeared persons, the family decided on 2 July 2000 to write to the Ministry of the Interior, the President, the National Observatory for Human Rights (ONDH) and the State prosecutor at the Constantine court to report the disappearance of the three brothers once again. No action was taken on these letters, however, and no investigation was launched. Only the National Observatory for Human Rights replied, telling the family on 2 March 2001 that "according to information provided by the security services, [Mohamed Kerouane] is not wanted and has never been arrested by the security services". As to Adel and Tarek, the family received two letters on 5 December 2001 from the National Advisory Commission for the Promotion and Protection of Human Rights (CNCPPDH) stating that "according to information provided by the security services, these two individuals are wanted by the security services",

but without giving any information about the kind of inquiries being made or their progress. On 25 September 2004 the Kerouane family were given a hearing by the Ad Hoc Commission on Disappearances, but the Commission merely attempted to persuade them to accept the principle of reconciliation and thereby renounce their claim to have the truth about the fate of the disappeared persons established and justice done.

2.10 On 25 November 2005 the United Nations Working Group on Enforced or Involuntary Disappearances was apprised of the cases of several hundred individuals, including that of the three Kerouane brothers. This group complaint has done nothing to clarify the victims' fate. The Algerian State has not replied to the Working Group's requests.

2.11 The sister of the victims and the second author of the complaint, Fatima Zohra Kerouane, has attempted to assert the provisions of chapter IV of Ordinance No. 06-01 on the Charter for Peace and National Reconciliation, which deal with the handling of cases of disappearance. Under these provisions, a thorough investigation and inquiries must be carried out before a certificate of disappearance or an official declaration of death can be drawn up. The author received three certificates, one each for Adel and Mohamed Kerouane, attesting to their "death as members of terrorist groups", and one for Tarek Kerouane, attesting to "disappearance under the special circumstances of the national tragedy", and dated the same day, i.e., 28 May 2006, even though there had been no proper investigation.

2.12 Later, a death certificate for Adel Kerouane dated 7 November 2006 was sent to the family, giving the date of death, allegedly as a member of terrorist groups, as "1994". Not only is no reliable and detailed information given in support of this statement, but several previous official documents contradict this date of death. In the decision of the Indictments Chamber of the Constantine Court dated 6 June 1995, Adel Kerouane had been stated to be at large, and in a letter of 20 January 1999, the Director-General of Collective Freedoms and Legal Affairs had said he was wanted by the police. The same applied to Tarek Kerouane, who had been described in an official certificate dated 28 May 2006 as disappeared, and then declared dead on 28 June 2006, with the date of death given as 31 May 1994. No evidence was produced in support of this statement. Moreover, two visiting permits had been issued after the presumed date of death, namely on 3 and 28 July 1994. Similarly, the 6 June 1995 decision of the Constantine Court again refers to him as "at large", and thus, by implication, alive. The date of 31 May 1994 is in fact the date of Tarek's disappearance, as given by the family to the court that pronounced him dead on 28 June 2006. Lastly, in respect of Mohamed Kerouane, the "certificate of disappearance under the special circumstances of the national tragedy", issued on 28 May 2006, gives no information – no date, no reference to the place or to the circumstances of death, and no mention of where he is buried.

2.13 As to the exhaustion of domestic remedies, the authors state that all the measures they and their families have taken have ended in failure. The victims' family have on several occasions reported the disappearance of Adel, Tarek and Mohamed Kerouane to the courts so that an investigation into their disappearance could be launched and their fate ascertained. The various barracks, police stations and gendarmeries in the region, the Constantine prosecutor's office and the *wilaya* office in Constantine had all been approached in an attempt to find out what had happened to the victims. The family have also tried to have an investigation carried out by initiating proceedings under Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation. The family of the disappeared men also approached the local administrative authorities and the highest authorities in the land, i.e. the President of the Republic and the Ministry of the Interior, in a letter dated 2 July 2000, which was also addressed to the National Observatory for Human Rights, but to which they have never had a reply.

2.14 The authors state that all these proceedings have been taken by members of the Kerouane family with no help from a lawyer. In fact, for their own safety, the two lawyers they approached both declined to accept the briefs.

2.15 Despite all the Kerouane family's efforts since 1994, no effective and thorough investigation has ever been undertaken to shed light on these events, and those responsible have never been prosecuted.

2.16 In addition, the authors maintain that they no longer have the legal right to take judicial proceedings since the promulgation of Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation.¹ Indeed, it would have been dangerous for them to take such action. Not only did all the remedies attempted by the authors prove ineffective, they are now no longer available. The authors therefore maintain that they are no longer obliged to keep pursuing their efforts at the domestic level in order to ensure that their communication is admissible before the Committee, as doing so would expose them to criminal prosecution.

2.17 The authors ask the Committee to find that domestic remedies have been duly exhausted and that the individual communication is admissible.

The complaint

3.1 The authors consider that Adel, Tarek and Mohamed Kerouane are victims of enforced disappearance² in violation of articles 6 (para. 1), 7, 9, 10 (para. 1), 16 and 23 (para. 1) of the Covenant, read alone and in conjunction with article 2 (para. 3). They also claim a violation by the Algerian State of articles 10 (para. 2) and 24 (para. 1) in respect of Tarek and Mohamed Kerouane. They also maintain that they and their families are themselves victims of violations of articles 7 and 23 (para. 1), read alone and in conjunction with article 2 (para. 3) of the Covenant.

3.2 The authors claim that Adel, Tarek and Mohamed Kerouane are victims of enforced disappearance, since they were arrested by State officials and after their arrest the State party refused to acknowledge the deprivation of liberty or to disclose their fate, thereby deliberately removing them from the protection of the law. They point out that the three Kerouane brothers were under the responsibility of the State party when they were arrested and that the State is obliged to guarantee the right to life of persons detained under its authority. The fact that the State party is unable to give precise and consistent information about a person being held in detention appears to show that it has not taken the necessary steps to protect that person during detention and has therefore failed in its duty to guarantee

¹ The authors note that article 45 of the Ordinance provides that "no individual or collective legal proceedings may be brought against members of any branch of the defence and security forces of the Republic for actions undertaken to protect persons and property, safeguard the nation and preserve the institutions of the People's Democratic Republic of Algeria. Any allegation or complaint shall be declared inadmissible by the competent judicial authority". Article 46 provides that "anyone who, through his or her spoken or written statements or any other act, uses or exploits 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". See also the concluding observations of the Human Rights Committee on the third periodic report of Algeria, adopted on 1 November 2007 (CCPR/C/DZA/CO/3), paras. 7 and 8.

² The authors refer to the definition of "enforced disappearance" provided in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, the General Assembly's Declaration on the Protection of All Persons from Enforced Disappearance, article 7, paragraph 2 (i), of the Rome Statute of the International Criminal Court, and the case law of the Inter-American Court of Human Rights and the European Court of Human Rights (ECHR).

the right to life. Noting that the Kerouane brothers have been missing since 1994 and 1996, which makes the chances of finding them alive virtually zero, the authors submit that article 6 has been violated in respect of these victims of enforced disappearance and that the State has not met its obligation to conduct a thorough investigation into the disappearance. Lastly, the authors claim that the adoption, retention and implementation of Ordinance No. 06-01 constitutes a violation of article 6 of the Covenant, read in conjunction with article 2, paragraph 3: by providing for impunity for those responsible for the crime of enforced disappearance and curtailing effective remedy, the Ordinance is not consistent with the positive obligation of the State party to take specific and effective measures to prevent the disappearance of individuals, to establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons and to bring the perpetrators to justice. The authors ask the Committee to find that Algeria has violated its positive obligations under article 6, read alone and in conjunction with article 2, paragraph 3, of the Covenant, in respect of Adel, Tarek and Mohamed Kerouane.

3.3 The authors refer to the Committee's established jurisprudence³ to the effect that enforced disappearance constitutes a violation of article 7 in respect of both the victim and the victim's family. Adel, Tarek and Mohamed Kerouane were arbitrarily arrested by State officials on 12 April 1996, 20 May 1994 and 22 February 1996 respectively. Since then they have been held incommunicado, deprived of all contact with the outside world, and unaware of what was happening with their families. Their detention does not seem to have been recorded in any public register, and no steps have been taken to inform their families of their situation. Furthermore, they were deprived of any legal means of challenging their imprisonment. As to Mohamed Kerouane, besides being the victim of enforced disappearance, in itself a violation of article 7, he has apparently been subjected to torture and other cruel, inhuman or degrading treatment. The authors ask the Committee to find that the State party has violated article 7 of the Covenant in respect of Adel, Tarek and Mohamed Kerouane.

3.4 The authors note that they and the other members of the Kerouane family have had no news of their brothers and grandsons for 18 and 20 years. Their fruitless efforts to find the three brothers, prompted by deep anxiety, have added to their anguish and distress. The impunity protecting the perpetrators of the disappearances is a further source of humiliation. The authors refer to the Committee's jurisprudence⁴ and ask the Committee to find that the anguish and distress felt by Kamela Allioua and Fatima Zohra Kerouane, and by all the Kerouane brothers' relatives, together with the State party's refusal to squarely face up to its past and make effective inquiries to establish the fate of the disappeared persons, amount to a violation of article 7 of the Covenant in respect of the two authors.

3.5 Referring to the Committee's jurisprudence,⁵ the authors argue that, read in conjunction with article 3, paragraph 2, of the Covenant, article 7 imposes on States parties the obligation to put an immediate stop to all the acts prohibited under article 7, to guarantee the right to lodge complaints against such acts, and to take action on those complaints by having the competent authorities conduct prompt, impartial, thorough and effective investigations in order to render the remedies effective. Adel and Tarek Kerouane, who have been missing for 20 years, and Mohamed Kerouane, who has been missing for 18 years, are victims of a crime of a continuing nature.⁶ Thus the obligation to put a stop to the

³ Communication No. 449/1991, *Mojica v. Dominican Republic*, Views adopted on 15 July 1994.

⁴ Communication No. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011.

⁵ Human Rights Committee, general comment No. 20 (1992) on article 7, on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment; and general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant.

⁶ International Convention for the Protection of All Persons from Enforced Disappearance, adopted on 20 December 2006 and signed by Algeria on 6 February 2007, art. 8.

violation persists as long as the missing person is unaccounted for.⁷ The authors submit that Algeria is required to take steps to halt the violation of article 7.

3.6 The authors claim that there is nothing to indicate that the brothers' arrest and subsequent deprivation of liberty was based on a procedure established in law and no arrest warrant or other authorization seems to have been produced at the time of arrest. The criminal charges against Adel and Tarek Kerouane, of which the family was notified more than a year after their disappearance, have not been substantiated by any evidence. The Indictments Chamber stated that "the suspects are at large" when they had actually been arrested by State officials. The duration of the Kerouane brothers' detention, and the places where they are being held, have not been specified. This therefore constitutes arbitrary deprivation of liberty under article 9, paragraph 1. Equally, given the circumstances of the brothers' arrest and detention, in all probability they were never informed of the criminal charges against them, which leads to the conclusion that article 9, paragraph 2, was also violated. There is no real evidence that they were brought before a judge within a reasonable time while in detention. The fact that Tarek and Adel Kerouane were declared to be at large when they had previously been arrested by officials of the State shows that the authorities not only wish to deny what happened to them, but also to remove them from the protection of the law. As to Mohamed, the authorities quite simply deny that he was ever arrested and detained, which tends to show that the coercive actions against him had no justification in law. The Kerouane brothers were held incommunicado, their family having never been able to contact them since their arrest, in violation of article 9, paragraph 3. They had no material possibility of legal action to challenge the legality of their detention or apply to a judge for their release, and no way even of seeking the assistance of a third party to defend them: article 9, paragraph 4, has also been violated. In violation of article 9, paragraph 5, no compensation has been awarded to the brothers' family for their unlawful arrest and detention. Moreover, the State party has not conducted any prompt, impartial, thorough and effective investigation into the disappearance, and those responsible for the offence have not been brought to justice, in violation of the positive obligations under article 2, paragraph 3, read in conjunction with article 9 of the Covenant. The authors ask the Committee to find a violation of all paragraphs of article 9 and to require the State party to pay compensation to the authors in lieu of the victims.

3.7 To the extent that it has been established that Adel, Tarek and Mohamed Kerouane are victims of enforced disappearance, the authors submit that their right to be treated with respect for the inherent dignity of the human person, as guaranteed under article 10, paragraph 1, of the Covenant, has been violated.

3.8 Referring to the Committee's jurisprudence,⁸ the authors also claim that, having been held incommunicado for an indefinite period and subjected to enforced disappearance, Adel, Tarek and Mohamed Kerouane were removed from the protection of the law, in violation of article 16 of the Covenant.

3.9 The enforced disappearance of the Kerouane brothers has seriously distressed the authors and the rest of their family. Their family life has been completely destroyed. Referring to the Committee's jurisprudence,⁹ the authors submit that, by its actions and omissions, the Algerian State has failed in its duty of protection towards the family, in violation of article 23, paragraph 1, of the Covenant.

⁷ *Varnava et al. v. Turkey*, [GC], Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 148, ECHR 2009.

⁸ Communication No. 1327/2004, *Atamna v. Algeria*, Views adopted on 10 July 2007, para. 7.9.

⁹ Communication No. 962/2001, *Mulezi v. Democratic Republic of the Congo*, Views adopted on 8 July 2004, para. 5.4.

3.10 Tarek Kerouane was 16 when he was arrested and Mohamed Kerouane 15. These children's arbitrary detention and the authorities' inertia in the face of their disappearance demonstrate that the Algerian State did not provide them with the protection proper to their status and, in particular, that their case was not adjudicated "as speedily as possible". They were deprived of all contact with their family, which is a clear violation of the State's obligation to act in the best interests of the child, in accordance with article 24 (para. 1) and article 10 (para. 2 (b)) of the Covenant.

3.11 Referring to the Committee's established jurisprudence,¹⁰ the authors contend that, by failing in its duty to make thorough and diligent inquiries into the brothers' disappearance, to inform their relatives of the results of the inquiries and to make appropriate reparation to the authors of this communication for the violations of their rights, the State party has violated its positive obligations under article 2. They ask the Committee to find that the State party has violated article 2 of the Covenant; to require prompt, thorough and effective investigations into the disappearance of Adel, Tarek and Mohamed Kerouane by impartial, independent bodies; to demand that Ordinance No. 06-01 be repealed; and to demand that full and effective reparation, including restitution, compensation, rehabilitation, satisfaction, public recognition of the crime against humanity and guarantees of non-recurrence, be made to the authors.

3.12 The authors ask the Committee to order the State party: (a) to release Adel, Tarek and Mohamed Kerouane if they are still alive; (b) to conduct a prompt, thorough and effective investigation into their disappearance; (c) to report to the authors and their family on the results of the investigation; (d) to prosecute, try and punish the persons responsible for the disappearance of Adel, Tarek and Mohamed Kerouane, in conformity with the State party's international commitments; and (e) to provide appropriate reparation to the beneficiaries of Adel, Tarek and Mohamed Kerouane for the grave moral and material harm which they have suffered since their disappearance.

State party's observations on admissibility

4.1 On 26 February 2013 the State party submitted a note verbale in which it merely referred the Committee to "the Algerian Government's background memorandum on the inadmissibility of communications submitted to the Human Rights Committee in connection with the implementation of the Charter for Peace and National Reconciliation" and to its additional memorandum on the inadmissibility of the communication. These documents had been submitted to the Committee in connection with several earlier communications and the State party did not provide copies of the memorandum or the additional memorandum, or any specific comments on the present communication.

4.2 The contents of these documents have been included in several previous Views adopted by the Committee.¹¹ The State party asks the Committee to note how similar the facts and situations described by the authors are and to take into account the sociopolitical and security context at the time; to conclude that the authors failed to exhaust all domestic remedies; to recognize that the authorities of the State party have established a comprehensive domestic mechanism for processing and settling the cases referred to in these communications through measures aimed at achieving peace and national reconciliation that are consistent with the principles of the Charter of the United Nations and subsequent covenants and conventions; to find the communication inadmissible; and to request that the authors seek an alternative remedy.

¹⁰ Communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 10.

¹¹ See, for example, communication No. 1931/2010, *Bouzeriba v. Algeria*, Views adopted on 23 July 2014, paras. 4.1 to 5.4.

Authors' comments on the State party's submission

5.1 In their comments dated 3 May 2013 the authors argue that the State party's adoption of domestic legislative and administrative measures to support the victims of the "national tragedy" cannot be invoked at the admissibility stage to prohibit individuals subject to its jurisdiction from using the procedure provided for under the Optional Protocol. In this case, the legislative measures adopted themselves amount to a violation of the rights enshrined in the Covenant, as the Committee has previously observed.¹²

5.2 The authors recall that the declaration of a state of emergency by Algeria on 9 February 1992 does not in any way affect the right of individuals to submit individual communications to the Committee. The authors thus consider that the State party's observations on the appropriateness of the communication do not constitute grounds for inadmissibility.

5.3 The authors claim that they have exhausted all available remedies and that the remedies mentioned by the State party, including the possibility of bringing the matter before the investigating judge and suing for damages in criminal proceedings under articles 72 and 73 of the Code of Criminal Procedure, are completely ineffective.

5.4 The authors also refer to article 45 of Ordinance No. 06-01, pursuant to which no proceedings may be instituted individually or collectively against any member of the defence and security forces. Anyone submitting such an allegation or complaint is liable to a penalty of 3 to 5 years' imprisonment and a fine of 250,000 to 500,000 Algerian dinars. Citing the Human Rights Committee, the authors further state that Ordinance No. 06-01 promotes impunity, violates the right to an effective remedy and is not compatible with the provisions of the Covenant.¹³ In the authors' view, the State party has therefore not convincingly demonstrated how suing for damages would have enabled the competent courts to receive and investigate complaints, as that would involve violating article 45 of the Ordinance, or how the author of a complaint could have been guaranteed immunity from prosecution under article 46 of the Ordinance. The authors' conclusion, on reading these provisions, is that any complaint regarding the violations suffered by the authors and their brothers and grandsons would be not only declared inadmissible but also treated as a criminal offence. The authors note that the State party fails to provide an example of any case which, despite the existence of this Ordinance, has led to the effective prosecution of the perpetrators of human rights violations in a similar case. The authors conclude that the remedies mentioned by the State party are futile.

5.5 With respect to the merits of the communication, the authors note that the State party has simply listed a number of scenarios according to which the victims of the "national tragedy" might have disappeared. Such general observations do not dispute the allegations made in the present communication.

5.6 The authors invite the Committee to consider their allegations sufficiently substantiated, given that they are unable to provide additional information in support of their communication, as only the State party has exact information about the fate of these individuals.

5.7 In their view, the absence of any response by the State party on the merits of the communication further constitutes tacit acceptance of the accuracy of the facts alleged by the authors. The State party's silence constitutes a recognition of failure in its duty to carry

¹² CCPR/C/DZA/CO/3, paras. 7, 8 and 13; communications No. 1588/2007, *Benaziza v. Algeria*, Views adopted on 26 July 2010, para. 9.2; and No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 11; and concluding observations of the Committee against Torture on the third periodic report of Algeria, adopted on 13 May 2008 (CAT/C/DZA/CO/3), paras. 11, 13 and 17.

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

out an investigation into a case of enforced disappearance brought to its attention, as otherwise it would have been in a position to provide a detailed response based on the results of the investigations that it should have conducted. On the merits, then, the authors maintain all the allegations set out in their initial communication.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 The Committee recalls that, before considering any claim contained in a communication, it must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant. Under article 5, paragraph 2 (a), of the Optional Protocol, the Committee must ascertain that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the disappearance of Adel, Tarek and Mohamed Kerouane was reported to the Working Group on Enforced or Involuntary Disappearances. However, it recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights or 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, paragraph 2 (a), of the Optional Protocol.¹⁴ Accordingly, the Committee considers that the examination of the case of Adel, Tarek and Mohamed Kerouane by the Working Group on Enforced or Involuntary Disappearances does not render the communication inadmissible under this provision.

6.2 The Committee notes that, by way of challenge to the admissibility of the communication, the State party merely refers to its background memorandum and additional memorandum, of which it does not provide copies. The Committee recalls that the State party has a duty not only to carry out thorough investigations of alleged violations of human rights brought to the attention of its authorities, particularly enforced disappearances and violations of the right to life, but also to prosecute, try and punish anyone held to be responsible for such violations.¹⁵ The authors repeatedly alerted the competent authorities to the disappearance of their brothers and grandsons, but the State party did not make any thorough and effective investigation into the disappearance of Adel, Tarek and Mohamed Kerouane, despite the fact that these were grave allegations of enforced disappearance. The State party has also failed to provide sufficient evidence that an effective remedy is available, while Ordinance No. 06-01 of 27 February 2006 continues to be applied despite the Committee's recommendation that it should be brought into line with the Covenant.¹⁶ The Committee is of the view that to sue for damages for offences as serious as those alleged in the present case cannot be considered a substitute for the charges that should be brought by the public prosecutor.¹⁷ The Committee considers that, for the purposes of admissibility of a communication, the author must exhaust only the remedies relevant to the alleged violation; in the present case, effective remedies in respect of enforced disappearance. The Committee therefore concludes that article 5, paragraph 2 (b),

¹⁴ Communication No. 1874/2009, *Mihoubi v. Algeria*, Views adopted on 18 October 2013, para. 6.2.

¹⁵ Communication No. 1884/2009, *Aouali et al. v. Algeria*, Views adopted on 18 October 2013, para. 6.4.

¹⁶ CCPR/C/DZA/CO/3, paras. 7, 8 and 13.

¹⁷ Communications No. 1779/2008, *Mezine v. Algeria*, Views adopted on 25 October 2012, para. 7.4; *Benaziza v. Algeria*, para. 8.3; *Berzig v. Algeria*, para. 7.4; No. 1905/2009, *Khirani v. Algeria*, Views adopted on 26 March 2012, para. 6.4; and No. 1791/2008, *Boudjemai v. Algeria*, Views adopted on 22 March 2013, para. 7.4.

of the Optional Protocol is not an obstacle to the admissibility of the present communication.

6.3 The Committee finds that the authors have sufficiently substantiated their allegations insofar as they raise issues under articles 6 (para. 1), 7, 9, 10 (para. 1), 16 and 23 (para. 1), read alone and in conjunction with article 2 (para. 3) of the Covenant, and of articles 10 (para. 2) and 24 (para. 1) in respect of Tarek Kerouane and Mohamed Kerouane. The Committee notes, however, that the authors did not apply to the State party authorities for compensation for the arbitrary or unlawful detention of their grandsons and brothers, and that the claim under article 9 (para. 5) is not admissible. The Committee therefore proceeds to consider the communication on the merits in respect of the alleged violations of articles 2 (para. 3), 6 (para. 1), 7, 9, 10 (paras. 1 and 2 (b)), 16, 23 (para. 1) and 24 (para. 1) of the Covenant.

Consideration on the merits

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

7.2 The State party submitted collective and general observations in response to the authors' serious allegations, and has been content to argue that communications incriminating public officials, or persons acting on behalf of public authorities, in cases of enforced disappearance between 1993 and 1998 should be considered within the broader context of the sociopolitical and security conditions that prevailed in the country during a period when the Government was struggling with terrorism. The Committee notes that 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. The Committee refers to its jurisprudence¹⁸ and recalls that the State party may not invoke the provisions of the Charter for Peace and National Reconciliation against persons who invoke provisions of the Covenant or who have submitted or may submit communications to the Committee. Ordinance No. 06-01, without the amendments recommended by the Committee, appears to promote impunity and therefore cannot, as it currently stands, be considered compatible with the provisions of the Covenant.¹⁹

7.3 The Committee notes that the State party has not replied to the authors' claims 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.²⁰ In conformity with article 4, paragraph 2, of the Optional Protocol, the State party has a duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with whatever information is available to it.²¹ 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.

7.4 The Committee notes that, according to the authors, their brothers and grandsons disappeared after their arrest, on 12 April 1994 (Adel Kerouane), 20 May 1994 (Tarek Kerouane) and 22 February 1996 (Mohamed Kerouane), and that the authorities, in addition to never admitting that they arrested them, have not conducted any effective investigation

¹⁸ *Aouali et al. v. Algeria*, para. 7.2.

¹⁹ CCPR/C/DZA/CO/3, para. 7 (a).

²⁰ *Aouali et al. v. Algeria*, para. 7.3. See also International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, judgment of 30 November 2010, para. 54.

²¹ See *Mezine v. Algeria*, para. 8.3; *Medjnoune v. Algeria*, para. 8.3; and *Boudjemai v. Algeria*, para. 8.3.

to establish what happened to them. The Committee notes that, according to the authors, the chances of finding Adel, Tarek and Mohamed Kerouane alive are virtually zero and that their prolonged absence and the testimony of a friend who said he had seen Mohamed's body at the morgue suggest that they died in detention. The Committee also notes that incommunicado detention entails a high risk of violation of the right to life, since victims are at the mercy of their jailers, who, by the very nature of the circumstances, are subject to no oversight. It recalls that, in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge that fact or by concealment of the fate of the disappeared person, removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable. In the case at hand, the Committee notes that the State party has produced no evidence to indicate that it has fulfilled its obligation to protect the lives of Adel, Tarek and Mohamed Kerouane. It therefore concludes that the State party has failed in its duty to protect the lives of Adel, Tarek and Mohamed Kerouane, in violation of article 6 of the Covenant.²²

7.5 The Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. In this context, the Committee recalls its general comment No. 20 (1992) on article 7, on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, which recommends that States parties should make provisions against incommunicado detention. The Committee notes that, according to the authors, Adel Kerouane was wounded and arrested on 12 April 1994 on the Batna road by security service officials, Tarek Kerouane, aged 16, was arrested on 20 May 1994 on his way home from school and Mohamed Kerouane, aged 15, was arrested on 22 February 1996 in the street by officers from the Hamma gendarmerie, where he was held for a month. Mohamed Kerouane's body, according to information corroborated by several individuals, was recognized three months after his arrest among other bodies piled at the side of a road in the Ghorab region, and then identified at the morgue by a family friend, who saw traces of torture and ill-treatment. In the absence of any satisfactory explanation from the State party, the Committee finds a multiple violation of article 7 of the Covenant in respect of Adel, Tarek and Mohamed Kerouane.²³

7.6 The Committee takes note of the anguish and distress caused to the authors and their family by the disappearance of Adel, Tarek and Mohamed Kerouane and by the continued uncertainty concerning their fate. It is therefore of the opinion that the facts before it reveal a violation of article 7 of the Covenant with regard to the authors.²⁴

7.7 As to the complaints of a violation of article 9, the Committee takes note of the authors' claims to the effect that Adel, Tarek and Mohamed Kerouane were arrested on 12 April 1994, 20 May 1994 and 22 February 1996, respectively, by State officials, without explanation. The State party's authorities have at no time provided any information to the family on the fate of Adel, Tarek and Mohamed Kerouane. The three brothers were not informed of the criminal charges against them and were not brought before a judge or other judicial authority, which would have enabled them to challenge the legality of their detention; and no official information was given to the authors and their family regarding the victims' whereabouts or their fate. In the absence of satisfactory explanations from the

²² *Aouali et al. v. Algeria*, para. 7.4.

²³ Communications No. 1295/2004, *El Alwani v. Libyan Arab Jamahiriya*, Views adopted on 11 July 2007, para. 6.5; and No. 1422/2005, *El Hassy v. Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 6.2.

²⁴ See *Mezine v. Algeria*, para. 8.6; *Khirani v. Algeria*, para. 7.6; *Berzig v. Algeria*, para. 8.6; communication No. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, Views adopted on 26 July 2010, para. 7.5; and *El Hassy v. Libyan Arab Jamahiriya*, para. 6.11.

State party, the Committee finds a violation of article 9 in respect of Adel, Tarek and Mohamed Kerouane.²⁵

7.8 Regarding the complaint under article 10, paragraph 1, the Committee reiterates that persons deprived of their liberty must not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated with humanity and respect for their dignity. In view of the incommunicado detention and in the absence of information from the State party in this regard, the Committee finds a violation of article 10, paragraph 1, of the Covenant in respect of Adel, Tarek and Mohamed Kerouane.²⁶

7.9 With regard to the alleged violation of article 16, the Committee reiterates its established jurisprudence, according to which the intentional removal of a person from the protection of the law for a prolonged period of time may constitute a refusal to recognize him or her as a person before the law if the victim was in the hands of the State authorities when last seen and if the efforts of his or her relatives to obtain access to potentially effective remedies, including judicial remedies (art. 2, para. 3, of the Covenant), have been systematically impeded.²⁷ In the present case, the Committee notes that the State party authorities have given the family no information on the fate or whereabouts of Adel, Tarek and Mohamed Kerouane since their arrest, in spite of the numerous requests made to various authorities of the State party. The Committee therefore finds that the enforced disappearance of Adel, Tarek and Mohamed Kerouane on 12 April 1994, 20 May 1994 and 22 February 1996, respectively, removed them from the protection of the law and deprived them of their right to recognition as persons before the law, in violation of article 16 of the Covenant.

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

7.11 The authors invoke article 2, paragraph 3, of the Covenant, which imposes on States parties the obligation to ensure an effective remedy for all persons whose Covenant rights have been violated. The Committee attaches importance to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of rights violations. It refers to its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, which provides *inter alia* 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 the present case, the victims' family repeatedly alerted the competent authorities, including judicial authorities such as the Constantine prosecutor, to the disappearance of Adel, Tarek and Mohamed Kerouane, but all their efforts proved futile and the State party has conducted no thorough and effective investigation into the disappearance of Adel, Tarek and Mohamed Kerouane. Furthermore, the absence of the legal right to take judicial proceedings since the promulgation of Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation continues to deprive Adel, Tarek and Mohamed Kerouane and their family of access to an effective remedy, because the Ordinance prohibits the pursuit of legal remedies to shed light on the most serious crimes such as enforced disappearance.²⁸ In light of the foregoing, the Committee concludes that the facts before it reveal a violation of article 2, (para. 3), read in conjunction with articles 6 (para. 1), 7, 9, 10 (para. 1) and 16 of the Covenant, with

²⁵ *Khirani v. Algeria*, para. 7.7; and *Berzig v. Algeria*, para. 8.7.

²⁶ See general comment No. 21 on article 10, para. 3; and, for example, communication No. 1780/2008, *Zarzi v. Algeria*, Views adopted on 22 March 2011, para. 7.8.

²⁷ *Khirani v. Algeria*, para. 7.9.

²⁸ CCPR/C/DZA/CO/3, para. 7.

regard to Adel, Tarek and Mohamed Kerouane, and of article 2 (para. 3), read in conjunction with article 7 of the Covenant, with regard to the authors.

7.12 The Committee also takes note of the authors' additional complaint that, at the time of their arrest and disappearance, Tarek and Mohamed Kerouane were aged 16 and 15, respectively. The Committee notes that the State party has not refuted these allegations. In this regard the Committee recalls its general comment No. 17 (1989) on the rights of the child, which states that the implementation of article 24 entails the adoption of special measures to protect children, in addition to the measures that States are required to take under article 2 to ensure that everyone enjoys the rights provided for in the Covenant. In the present case, the State party took no account of the fact that the two brothers were minors in order to give them special protection. The Committee therefore considers that the State party has also violated article 24, paragraph 1, in respect of Tarek and Mohamed Kerouane, who, as minors, should have been afforded special protection.

7.13 In light of the above, the Committee will not consider separately the authors' claims of a violation of article 10, paragraph 2 (b), of the Covenant in respect of Tarek and Mohamed Kerouane.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses violations by the State party of articles 6, 7, 9, 10 and 16, and article 2 (para. 3), read in conjunction with articles 6, 7, 9, 10 and 16 of the Covenant, in respect of Adel, Tarek and Mohamed Kerouane. In addition, the Committee finds a violation of article 24 and of article 2 (para. 3), read in conjunction with article 24, in respect of Tarek and Mohamed Kerouane. The Committee further finds a violation of article 7 and of article 2 (para. 3), read in conjunction with article 7, in respect of the authors.

9. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the family of Adel, Tarek and Mohamed Kerouane with an effective remedy, including by: (a) conducting a thorough and effective investigation into the disappearance of Adel, Tarek and Mohamed Kerouane and providing their family with detailed information about the results of its investigation; (b) releasing Adel, Tarek and Mohamed Kerouane immediately if they are still being held incommunicado; (c) if they are dead, handing over their remains to their family; (d) prosecuting, trying and punishing those responsible for the violations committed; and (e) providing adequate compensation to the authors, and to Adel, Tarek and Mohamed Kerouane if they are alive, for the violations suffered. Notwithstanding the terms of Ordinance No. 06-01, the State party should also ensure that it does not impede enjoyment of the right to an effective remedy for the victims of crimes such as torture, extrajudicial killings and enforced disappearances. The State party is also under an obligation to prevent similar violations in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.