



## International Covenant on Civil and Political Rights

Distr.: General  
5 July 2013

Original: English

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### Human Rights Committee

#### Communication No. 1807/2008

##### Views adopted by the Committee at its 107th session (11–28 March 2013)

<i>Submitted by:</i>	Slimane Mechani (represented by counsel, Collectif des Familles de Disparu(e)s en Algérie (Collective of Families of the Disappeared in Algeria))
<i>Alleged victims:</i>	Farid Mechani (the author's son) and the author himself
<i>State party:</i>	Algeria
<i>Date of communication:</i>	30 June 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 26 August 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	22 March 2013
<i>Subject matter:</i>	Enforced disappearance
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Prohibition of torture and cruel or inhuman treatment, right to liberty and security of person, right of all persons deprived of their liberty to be treated with humanity and dignity, right to a fair trial, recognition as a person before the law and right to an effective remedy
<i>Articles of the Covenant:</i>	Arts. 2, para. 3; 7; 9, paras. 1–4; 10, 14 and 16
<i>Article of the Optional Protocol:</i>	Art. 5, para. 2 (b)

## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (107th session)**

concerning

#### **Communication No. 1807/2008\***

*Submitted by:* Slimane Mechani (represented by counsel, Collectif des Familles de Disparu(e)s en Algérie (Collective of Families of the Disappeared in Algeria))

*Alleged victims:* Farid Mechani (the author's son) and the author himself

*State party:* Algeria

*Date of communication:* 30 June 2008 (initial submission)

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

*Meeting on 22 March 2013,*

*Having concluded* its consideration of communication No. 1807/2008, submitted to the Human Rights Committee by Slimane Mechani under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

*Adopts* the following:

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

1.1 The author of the communication, dated 30 June 2008, is Slimane Mechani, an Algerian national born on 18 August 1937. The author claims that his son, Farid Mechani, an Algerian national born on 5 February 1965, is the victim of violations by Algeria of articles 2, paragraph 3; 7; 9; 10; 14; and 16 of the International Covenant on Civil and

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\* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Kheshoe Parsad Matadeen, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval. Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Lazhari Bouzid, did not participate in the examination of the communication. The text of an individual opinion by Committee member Mr. Victor Manuel Rodríguez-Rescia is appended to the present Views.

Political Rights. The author claims that he himself is the victim of violations of articles 2, paragraph 3, and 7 of the Covenant. He is represented by the Collectif des Familles de Disparu(e)s en Algérie (Collective of Families of the Disappeared in Algeria).

1.2 On 12 March 2009, the Committee, through the Special Rapporteur on new communications and interim measures, decided not to consider the admissibility and the merits of the case separately.

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

2.1 At 11.15 a.m. on Sunday, 16 May 1993, Farid Mechani was returning home after running an errand. However, he did not manage to get home. He was stopped very near to his home, at the corner of the rue Sainte Claire Deville and the no-through road in Hussein Dey, Algiers, by six plain-clothed police officers who arrived at great speed in two vehicles, a Peugeot 205 and Peugeot J5-type van. The officers said they were from the *daira* (subprefecture) police department<sup>1</sup> in Hussein Dey and were acting on the orders of Divisional Commissioner R.G. and Commissioner D.F. The police jumped on Farid Mechani, who tried to ask why he was being arrested but the only answer he received was to be pushed violently into the van. He was arrested in the presence of his mother and neighbours, no warrant was produced nor was any reason given for his arrest. A few minutes after Farid Mechani's arrest, the same police officers appeared again and headed toward the house of a neighbour, S.B. Finding that S.B. was not at home, the officers went to his father's shop, but he was not there either, so they took his brother M.B. instead. As soon as he learned what had happened, S.B. reported to the 14th district police station and was arrested. His brother M.B. was only released three days later. When he left the police station, M.B. went to see Farid Mechani's parents to tell them that their son had been at the 14th district police station. He told the family that he had heard Farid Mechani's voice several times from a neighbouring cell, and that he had been called by a police officer on the second day of his detention. M.B. had not heard his voice after that.<sup>2</sup>

2.2 After hearing M.B.'s statement, Slimane Mechani learned that his son Farid Mechani had been arrested because of a denunciation by a neighbour, a certain L.A.B., a watchman at the youth centre, which had been the target of a bomb attack; shortly before the arrest, he had been questioned as to how the perpetrators had been able to enter the office of the director of the youth centre. L.A.B. had allegedly admitted having facilitated the attack and denounced Farid Mechani as an active member of the Islamic Salvation Front and the "brains" behind the operation, in which two other people had also allegedly participated. The statements by L.A.B., presumably obtained under torture, are noted in the minutes of a police report of 23 May 1993.

2.3 The same report mentions that Farid Mechani is a "fugitive". On 1 June 1993, the author learned that his son had been summoned before the investigating judge for "setting up an armed terrorist group and endangering State security" but he had failed to appear. He was therefore declared a fugitive and a warrant was issued for his arrest. The report also mentioned that Farid Mechani had close links with a certain A.D., who was accused of

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<sup>1</sup> The *daira* police department is a territorial structure at the level of the subprefecture which has authority over the criminal investigation units and police stations in the subprefecture.

<sup>2</sup> The testimony, annexed to the communication, of the mother of a fellow prisoner indicates that Farid Mechani and two other prisoners were allegedly tortured at Hussein Dey police station for several days and then brought before the investigating judge, before being finally transferred to El Harrach prison in Algiers, where they were separated on arrival.

setting up an armed terrorist group.<sup>3</sup> A.D., however, states that he has neither seen nor met with Farid Mechani.

2.4 The author went each day to the 14th district police station, where the police systematically denied that Farid Mechani was there. In a telephone interview granted by the Director of Judicial Affairs on 25 September 1993, the author learned that Farid Mechani had been handed over to the military police on 17 May 1993, that is, the day after his arrest. The Director of Judicial Affairs said he had received that information from the chief prosecutor of the Algiers prosecution service. According to the author, it is therefore certain that Farid Mechani was arrested and held in custody at the 14th district police station for the first two days after his arrest. This agrees with the account of one of his fellow prisoners, M.B., who explained to the family that he had heard Farid Mechani's voice during the first two days of his detention (see para. 2.1).

2.5 Slimane Mechani instructed a lawyer, who found Farid Mechani's case-file at Bab-el-Oued Special Court.<sup>4</sup> On 22 August 1993, more than three months after the police arrested him, Farid Mechani was summoned by the chief prosecutor to Bab-el-Oued Special Court for the review chamber to rule on the charges against him. The author then asked to meet the prosecutor to explain that he had received no information on his son's fate since his arrest on 16 May 1993. However, the prosecutor refused to receive him. It is impossible to know whether Farid Mechani was finally brought before the investigating judge or the prosecutor.

2.6 According to the committal order issued by the review chamber on 6 September 1993, Farid Mechani was accused, along with six other defendants, of being a leader and founder of the armed group that committed the attempted attack. No information in respect of the hearing or any confrontation with witnesses that may have taken place is included in the document. The charges are based solely on the testimony of L.A.B. (see para. 2.2), who was also a defendant in the case and informed on his co-defendants; he was eventually released.

2.7 On 31 October 1993, the Mechani family received a threatening letter from the Organisation des jeunes Algériens libres (Organization of Young Free Algerians), warning them: "Your son Farid is a terrorist. His crimes have bereaved many innocent families. By remaining silent and helping him, you are supporting terrorism ... From now on, pay attention to your lives, the lives of your loved ones and your property. We will take action very soon."

2.8 On 4 May 1994, Farid Mechani was tried in absentia by Bab-el-Oued Special Court, composed of anonymous judges, sentenced to life imprisonment for "endangering State security and conspiracy" and "membership of a criminal association that has the aim of causing violence and debasing the State", and declared a "fugitive". Farid Mechani's family would never receive any more news of their son, who is still missing.

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<sup>3</sup> The author submits that A.D., after having been tortured and subjected to many years of court proceedings, as well as seven months of arbitrary detention, was released, rearrested and then finally declared innocent and released in 1995.

<sup>4</sup> In its article 11, legislative decree No. 92-03 of 30 September 1992 on combating subversion and terrorism established three "special courts" to hear cases involving offences under chapter 1 of the decree, that is, "subversive or terrorist" acts. Five anonymous judges, appointed by a non-publishable presidential decree (art. 17 of the Decree), sat on the special courts. Publication of the identity of judges attached to a special court is punishable by a term of imprisonment of 2-5 years. According to the authors, between February 1993 and June 1994, the special courts tried more than 10,000 people and handed down 1,127 death sentences.

2.9 The author argues that he has never stopped looking for his son, submitting appeals to obtain justice for his son and learn the truth about his disappearance. He went to the Hussein Dey police station the day after the arrest and on numerous subsequent occasions. The police officers consistently denied that Farid Mechani was there, although he had been arrested by officers from that police station, in the presence of several witnesses. With regard to administrative remedies, on 11 June 1993, the author sent a letter to the Wali (prefect) of Algiers, asking him to intervene with the Hussein Dey police station which was holding Farid. The same day, he wrote a letter to the Chairperson of the Ligue des Droits de l'Homme (Human Rights League). On 3 July 1993, through the lawyer he had retained, he contacted the Chairperson of the National Observatory for Human Rights to denounce the "illegal detention" of Farid Mechani. On 8 March 2003, the author submitted an appeal to the National Commission for the Protection and Promotion of Human Rights (successor to the Observatory). The petition remains unanswered. On 22 September 2004, he compiled a case-file ("registration card") for the ad hoc commission on disappearances set up by the Government. No inquiry was conducted into Farid Mechani's fate as a result of that submission.<sup>5</sup> The author approached the ad hoc commission once again and, on 8 February 2006, it finally acknowledged receipt of the case-file on Farid Mechani.

2.10 The author retained a lawyer to defend his son's rights. After receiving a summons on 22 August 1993 for his son to report to the chief prosecutor at Bab-el-Oued Special Court, the author himself reported to the court to request a hearing with the chief prosecutor, who refused to receive him. On 7 September 1993, he then lodged a complaint with the chief prosecutor at the Algiers Special Court based in Bab-el-Oued, informing him of the circumstances of Farid Mechani's arrest and calling, inter alia, for his son to be brought before the court. That appeal remains unanswered.

2.11 On 21 September 1993, the author appealed to the Director of Judicial Affairs of the Ministry of Justice, denouncing the illegal detention of his son. A few days later he learned from the Director that Farid Mechani had been handed over to the military police the day after his arrest.

2.12 On 26 September 1993, the author submitted a complaint to the Minister of the Interior, the Prime Minister and the Chairman of the High Council of State, informing them of the circumstances surrounding his son's arrest and denouncing his unlawful detention. He never received a reply.

2.13 The case of Farid Mechani was transmitted to the Working Group on Enforced or Involuntary Disappearances on 7 March 2003.

2.14 The author argues that the long silence that has met all the steps he has taken over the past 14 years<sup>6</sup> concerning his son's disappearance, despite the complaints he has submitted, has deprived him of the enjoyment of his right to an effective remedy which should have allowed him to obtain at least the opening of an investigation. He adds that the adoption by referendum on 29 September 2005 of the Charter for Peace and National Reconciliation and its implementing legislation, which came into force on 28 February 2006, rules out the possibility that any effective and available domestic remedies exist in Algeria to which the families of victims of disappearance could have recourse. He believes that ordinance No. 06-01 of 27 February 2006 enacting the Charter<sup>7</sup> precludes any possibility of legal action against agents of the State, providing in its article 45 for the inadmissibility of any proceedings brought "against individuals or groups who are members

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<sup>5</sup> The author adds that the ad hoc commission never published its final report.

<sup>6</sup> Nearly 20 years at the time of consideration of the communication by the Committee.

<sup>7</sup> Ordinance No. 06-01 of 28 Moharram 1427 (27 February 2006) enacting the Charter for Peace and National Reconciliation, *Official Gazette* No. 11 of 28 February 2006.

of any branch of Algeria's defence and security forces for actions undertaken to protect persons and property, safeguard the nation and preserve its institutions. Any allegation or complaint shall be declared inadmissible by the competent legal authority." Since its entry into force on 28 February 2006, the ordinance of 27 February 2006 has prevented any possibility of legal remedy. The author therefore argues that, as the steps he has taken have proved futile and, in the absence of effective remedies, no investigation has been conducted,<sup>8</sup> he is, under article 45 of ordinance No. 06-01, deprived of any redress, as he is legally unable to bring action or lodge a simple appeal. He also claims, in the light of the new legislation in Algeria, that there is no longer any remedy within the meaning of article 2, paragraph 3, of the International Covenant on Civil and Political Rights available to the families of the victims of enforced disappearances.<sup>9</sup> The author therefore argues that he has exhausted all possible remedies and that it is impossible for him to take any legal proceedings in the State party for the reasons mentioned.

### **The complaint**

3.1 The author, referring to the definition of enforced disappearance given in article 7, paragraph 2 (i), of the Rome Statute of the International Criminal Court and to the Committee's jurisprudence,<sup>10</sup> invokes in the first place article 7 of the Covenant, in that the circumstances surrounding the disappearance of Farid Mechani, as well as the testimony of his fellow prisoners, demonstrate that he was tortured or subjected to cruel and inhuman treatment after his disappearance. In addition, the author contends that the very fact of being subjected to disappearance of itself constitutes inhuman or degrading treatment with regard to the victim.<sup>11</sup> The author, referring to the Committee's jurisprudence,<sup>12</sup> expresses his own feelings of despair and injustice at the authorities' denial that they were holding his son, although he had been arrested a few days previously in front of witnesses by those same authorities. Since his son's arrest, the author has not been able to live a normal life, as he is constantly wondering where his son is, and why and how the authorities made him disappear. He lives in the expectation of and anguish at the idea of dying without seeing his son again. For these reasons, the author claims to be a direct victim of a violation of article 7 of the Covenant.

3.2 The author also invokes article 9 of the Covenant, arguing that Farid Mechani was arrested by the security forces on 16 May 1993 and his family has not seen him since. However, the authorities denied from the beginning that he was being held, although he had been arrested and detained in front of witnesses. The Algerian authorities have never explained why they declared Farid Mechani a "fugitive" and tried him in absentia on 4 May 1994, when he was probably being held by the security services. According to the author, the fact that his detention was not acknowledged, that it was totally devoid of the safeguards prescribed by article 9 and that the investigations lacked the effective and efficient character required in such circumstances means that Farid Mechani was arbitrarily deprived of his liberty and security, in violation of article 9, as well as of the protection afforded by the guarantees set forth in that article.<sup>13</sup>

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<sup>8</sup> Communication No. 147/1983, *Arzuada Gilboa v. Uruguay*, Views adopted on 1 November 1985.

<sup>9</sup> Committee's concluding observations of 1 November 2007 following its consideration of the third periodic report submitted by Algeria (CCPR/C/DZA/CO/3, paras. 7-18).

<sup>10</sup> Communication No. 950/2000, *Sarma v. Sri Lanka*, Views adopted on 16 July 2003, para. 9.3.

<sup>11</sup> See, *inter alia*, Communication No. 540/1993, *Celis Laureano v. Peru*, Views adopted on 25 March 1996.

<sup>12</sup> See, *inter alia*, communication No. 1328/2004, *Kimouche v. Algeria*, Views adopted on 10 July 2007. Concluding observations on Algeria (CCPR/C/79/Add.95, 18 August 1998, para. 10).

<sup>13</sup> See, *inter alia*, communication No. 612/1995, *Arhuaco v. Colombia*, Views adopted on 29 July 1997.

3.3 The author also invokes article 10 of the Covenant, in that the conditions in which Farid Mechani was held, without being able to receive the visit of a lawyer or a family member, cannot be qualified as humane. Held incommunicado and therefore without any link to the outside world, the conditions in which he was detained were conducive to ill-treatment, in violation of his rights to be treated with humanity and with respect for the inherent dignity of his person.

3.4 The author also claims a violation of article 14 of the Covenant, alleging that his son, Farid Mechani, was deprived of his right to a fair trial, having been tried in absentia and sentenced by Bab-el-Oued Special Court on 4 May 1994, after an unfair trial, held in camera, in the absence of his family. Although his lawyer was present at the trial, she was unable to speak on behalf of her client, whom she has never been able to see.<sup>14</sup> Farid Mechani was sentenced to life imprisonment for endangering State security, conspiracy and membership of a criminal association that has the aim of causing violence and debasing the State, even though he had never officially been heard by the investigating judge. He was furthermore declared a “fugitive” and a warrant was issued for his arrest although, according to the testimony of his fellow prisoners, he had been detained in Hussein Dey police station and then transferred to El Harrach prison.

3.5 The author also invokes article 16 of the Covenant, noting that the Algerian authorities denied Farid Mechani’s human rights, having exposed him to unacknowledged detention and thus denied him the protection of the law.

3.6 Finally, the author invokes article 2, paragraph 3, of the Covenant, alleging that his son, Farid Mechani, whose detention has not been acknowledged, has thus been deprived of his legitimate right to exercise an effective remedy. Not only have the authorities not carried out all the necessary investigations to shed light on the circumstances of his disappearance, identify the perpetrators and bring them to justice, but they have also denied being involved in Farid Mechani’s disappearance. Despite all the steps taken by the author, the State party has failed to fulfil its obligation to conduct a thorough and effective investigation into the disappearance and fate of Farid Mechani, to inform the author of the results of the investigation, to initiate criminal proceedings against those persons held responsible for his disappearance and to bring them to justice and punish them. The State party has thus made itself responsible for a violation of article 2, paragraph 3, of the Covenant.

3.7 In conclusion, the author repeats his request that the Committee should find that the State party has acted in violation of articles 2, paragraph 3; 7; 9; 10; 14; and 16 of the Covenant in respect of Farid Mechani, and articles 2, paragraph 3, and 7 of the Covenant in respect of the author himself. He also asks the Committee to request the State party to carry out urgent independent investigations to: (a) find Farid Mechani; (b) bring the perpetrators of this enforced disappearance before the appropriate civil authorities to be prosecuted; and (c) give Farid Mechani – if he is still alive – and his parents adequate, effective and prompt reparation for the harm suffered.

#### **State party’s observations on the admissibility of the communication**

4.1 On 3 March 2009, the State party, in a “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”, contested the admissibility of the communication and of 10 other communications

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<sup>14</sup> The author adds that the practice in Algeria is for lawyers not to plead on behalf of persons being tried in absentia.

submitted to the Human Rights Committee. The State party is of the view that communications incriminating public officials, or persons acting on behalf of public authorities, in cases of enforced disappearances during the period in question – from 1993 to 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 to combat terrorism.

4.2 During that period, the Government had to fight against groups that were not coordinated among themselves. As a result, there was some confusion in the manner in which a number of operations were carried out among the civilian population, and it was difficult for civilians to distinguish between the actions of terrorist groups and those of the security forces, to whom civilians often attributed enforced disappearances. Hence, according to the State party, while enforced disappearances may be due to many causes, they cannot be blamed on the Government. On the basis of data recorded by a variety of independent sources, including the press and human rights organizations, it may be concluded that the concept of disappearances in Algeria during the period in question covers six possible scenarios, none of which can be blamed on the State. The first scenario cited by the State party concerns persons reported missing by their relatives but who in fact had chosen to go into hiding in order to join an armed group and who instructed their families to report that they had been arrested by the security services, as a way of “covering their tracks” and avoiding being “harassed” by the police. The second scenario concerns persons who were reported missing after their arrest by the security services but who took advantage of their subsequent release to go into hiding. The third scenario concerns persons abducted by armed groups which, because they were not identified or because they had stolen uniforms or identification documents from police officers or soldiers, were mistakenly thought to belong to the armed forces or security services. The fourth scenario concerns persons reported missing who abandoned their families, and sometimes even left the country, to escape from personal problems or family disputes. The fifth scenario concerns persons reported missing by their family but who were in fact wanted terrorists who had been killed and buried in the maquis following factional infighting, doctrinal disputes or arguments over the spoils of war among rival armed groups. The sixth scenario mentioned by the State party concerns persons reported missing who were actually living in Algeria or abroad under a false identity provided by a network of document forgers.

4.3 The State party maintains that it was in view of the diversity and complexity of the situations covered by the general concept of disappearance that the Algerian legislature, following the referendum on the Charter for Peace and National Reconciliation, recommended a comprehensive approach to the issue of disappeared persons, whereby all persons who had disappeared in the context of the “national tragedy” would be cared for, all victims would be offered support to overcome their ordeal and all victims of disappearance and their beneficiaries would be entitled to redress. According to statistics from the Ministry of the Interior, 8,023 cases of disappearance have been reported, 6,774 examined, 5,704 approved for compensation and 934 rejected, with 136 still pending. A total of 371,459,390 Algerian dinars (DA) has been paid out as compensation to all the victims concerned. In addition, a total of DA 1,320,824,683 has been paid out in monthly pensions.

4.4 The State party further argues that not all domestic remedies have been exhausted. It stresses the importance of distinguishing between simple formalities involving the political or administrative authorities, non-judicial remedies pursued through advisory or mediation bodies, and judicial remedies pursued through the relevant courts of justice. The State party



observes that, as may be seen from the authors' statements,<sup>15</sup> the complainants have written letters to political and administrative authorities, petitioned advisory or mediation bodies and petitioned representatives of the prosecution service (chief prosecutors and public prosecutors), but have not, strictly speaking, initiated legal action and seen it through to its conclusion by availing themselves of all available remedies of appeal and judicial review. Of all these authorities, only the representatives of the prosecution service are authorized by law to open a preliminary inquiry and refer a case to the investigating judge. In the Algerian legal system, it is the public prosecutor who receives complaints and who, if warranted, institutes criminal proceedings. Nevertheless, in order to protect the rights of victims or their beneficiaries, the Code of Criminal Procedure authorizes the latter to sue for damages by filing a complaint with the investigating judge. In this case, it is the victim, not the prosecutor, who initiates criminal proceedings by bringing the matter before the investigating judge. This remedy, which is provided for in articles 72 and 73 of the Code of Criminal Procedure, was not utilized, despite the fact that it would have enabled the victims to institute criminal proceedings and compel the investigating judge to initiate proceedings, even if the prosecution service had decided otherwise.

4.5 The State party also notes the author's contention that the adoption by referendum of the Charter for Peace and National Reconciliation and its implementing legislation – in particular, article 45 of ordinance No. 06-01 – rules out the possibility that any effective and available domestic remedies exist in Algeria to which the families of victims of disappearance could have recourse. On this basis, the author believed he did not need to bring the matter before the relevant courts, in view of the latter's likely position and findings regarding the application of the ordinance. However, the author cannot invoke this ordinance and its implementing legislation as a pretext for failing to institute the legal proceedings available to him. The State party recalls the Committee's jurisprudence to the effect that a person's subjective belief in, or presumption of, the futility of a remedy does not exempt that person from the requirement to exhaust all domestic remedies.<sup>16</sup>

4.6 The State party then turns its attention to the nature, principles and content of the Charter for Peace and National Reconciliation and its implementing legislation. It maintains that, in accordance with the principle of the inalienability of peace, which has become an international right to peace, the Committee should support and consolidate peace and encourage national reconciliation with a view to strengthening States affected by domestic crises. As part of this effort to achieve national reconciliation, the State party adopted the Charter, and its implementing ordinance prescribes legal measures for the discontinuance of criminal proceedings and the commutation or remission of sentences for any person who is found guilty of acts of terrorism or who benefits from the provisions of the legislation on civil dissent, except for persons who have committed or been accomplices in mass killings, rapes or bombings in public places. This ordinance also helps to address the issue of disappearances by introducing a procedure for filing an official finding of presumed death, which entitles beneficiaries to receive compensation as victims of the "national tragedy". Social and economic measures have also been put in place, including the provision of employment placement assistance and compensation for all persons considered victims of the "national tragedy". Finally, the ordinance prescribes political measures, such as a ban on holding political office for any person who exploited religion in the past in a way that contributed to the "national tragedy", and establishes the inadmissibility of any proceedings brought against individuals or groups who are members of any branch of the Algerian

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<sup>15</sup> As the State party has provided a common reply to 11 different communications, it refers to the "authors". This reference thus also includes the author of the present communication.

<sup>16</sup> Communications Nos. 210/1986 and 225/1987, *Pratt and Morgan v. Jamaica*, Views adopted on 6 April 1989.

defence and security forces for actions undertaken to protect persons and property, safeguard the nation and preserve its institutions.

4.7 In addition to the establishment of funds to compensate all victims of the “national tragedy”, the sovereign people of Algeria have, according to the State party, agreed to a process of national reconciliation as the only way to heal the wounds inflicted. The State party insists that the proclamation of the Charter for Peace and National Reconciliation reflects a desire to avoid confrontation in the courts, media outpourings and political score-settling. The State party is therefore of the view that the author’s allegations are covered by the comprehensive domestic settlement mechanism provided for in the Charter.

4.8 The State party asks the Committee to note how similar the facts and situations described by the author are and to take into account the sociopolitical and security context in which they occurred; to find that the author failed to exhaust all domestic remedies; to recognize that the authorities of the State party have established a comprehensive domestic mechanism for processing and settling the cases referred to in these communications through measures aimed at achieving peace and national reconciliation consistent with the principles of the Charter of the United Nations and subsequent covenants and conventions; to find the communication inadmissible; and to request that the author seek an alternative remedy.

#### **Additional observations by the State party on the admissibility of the communication**

5.1 On 9 October 2009, the State party transmitted a further memorandum to the Committee, in which it raises the question of whether the submission of a series of individual communications might not actually amount to an abuse of procedure aimed at bringing before the Committee a broad historical issue involving causes and circumstances of which the latter is unaware. The State party observes in this connection that these “individual” communications dwell on the general context in which the disappearances occurred, focusing solely on the actions of the security forces and never mentioning those of the various armed groups that used criminal concealment techniques to incriminate the armed forces.

5.2 The State party insists that it will not address the merits of these communications until the issue of their admissibility has been settled, since all judicial or quasi-judicial bodies have a duty to deal with preliminary questions before considering the merits. According to the State party, the decision in the cases in point to consider questions of admissibility and the merits jointly and simultaneously – aside from the fact that it was not arrived at on the basis of consultation – seriously prejudices the proper consideration of the communications in terms of both their general nature and their intrinsic particularities. Referring to the rules of procedure of the Human Rights Committee, the State party notes that the sections relating to the Committee’s procedure to determine the admissibility of communications are separate from those relating to the consideration of communications on the merits, and that therefore these questions could be considered separately. Concerning the exhaustion of domestic remedies, the State party stresses that for none of the complaints or requests for information he submitted did the author use channels that would have allowed consideration of the case by the Algerian judicial authorities.

5.3 Recalling the Committee’s jurisprudence regarding the obligation to exhaust domestic remedies, the State party stresses that mere doubts about the prospect of success or concerns about delays do not exempt the author from the obligation to exhaust these remedies. As to the question of whether the promulgation of the Charter for Peace and National Reconciliation has barred the possibility of appeal in this area, the State party replies that the failure by the author to submit his allegations to examination has so far prevented the Algerian authorities from taking a position on the scope and limitations of the applicability of the Charter. Moreover, under the ordinance in question, the only

proceedings that are inadmissible are those brought against “members of any branch of the defence and security forces of the Republic” for actions consistent with their core duties towards the Republic, namely, to protect persons and property, safeguard the nation and preserve its institutions. On the other hand, any allegations concerning actions attributable to the defence or security forces that can be proved to have taken place in any other context are subject to investigation by the appropriate courts.

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

6.1 On 17 December 2012, the author submitted comments on the State party’s observations on admissibility. He first draws the Committee’s attention to the general nature of the State party’s response to the communication, which it has presented systematically for all the individual communications pending before the Committee since the Charter and its implementing legislation came into effect, without any mention of the specific aspects of the case or the remedies attempted by the victim’s family. Concerning the exhaustion of domestic remedies, the author, referring to his original communication, reiterates that he has submitted many appeals, all of which proved ineffective. Of the 15 judicial and non-judicial complaints lodged between 1993 and 2006, none resulted in a diligent investigation or criminal prosecution, although they concerned serious allegations of enforced disappearance.<sup>17</sup> The author adds that the fact that the family has not sued for damages in criminal proceedings does not render the communication inadmissible, because that procedure is not an appropriate remedy.<sup>18</sup> He recalls that he asked to meet the prosecutor at Bab-el-Oued Special Court to inform him of the disappearance of Farid Mechani since his arrest on 16 May 1993, but the prosecutor refused to receive him. He then petitioned the prosecutor on 7 September 1993 by registered letter, without any result. The author reiterates that ordinance No. 06-01 precludes any possibility of judicial action against State officials, by providing in its article 45 that any allegation or complaint against agents of the State shall automatically be declared inadmissible, meaning that no remedies against State officials are available to the victims of disappearance.<sup>19</sup> The author therefore argues that article 45 of ordinance No. 06-01, which disregards the rights guaranteed by the Covenant, may not be invoked and that he has exhausted the domestic remedies available.

6.2 The author rejects the State party’s argument inviting the Committee to adopt a general approach to cases of enforced disappearance. According to him, such an approach would be incompatible with article 5 of the Optional Protocol, and rule 96 of the Committee’s rules of procedure. The fact that Farid Mechani disappeared in 1993 could not justify the loss of his right to have his communication examined by the Committee. The author further recalls that the Committee is concerned that provisions in the texts of the Charter seemed to promote impunity and infringe the right to an effective remedy and, in its concluding observations, has called the State party to inform the public of the right of private individuals to refer a matter to the Committee, pursuant to the Optional Protocol.<sup>20</sup> The author adds that the legislation implementing the Charter requires the families of disappeared persons to obtain a finding of presumed death in order to claim financial compensation. This procedure does not include any provision for the police or judicial

<sup>17</sup> Communication No. 1781/2008, *Djebrouni and Berzig v. Algeria*, Views adopted on 31 October 2011, para. 7.4.

<sup>18</sup> See, *inter alia*, communication No. 1753/2008, *Guezout and Rakik v. Algeria*, Views adopted on 19 July 2012, para. 7.4.

<sup>19</sup> See, *inter alia*, Committee’s Views in communication No. 1753/2008, *Guezout and Rakik v. Algeria*, as well as at its concluding observations on the periodic report of Algeria, CCPR/C/DZA/CO/3, para. 7 (a).

<sup>20</sup> CCPR/C/DZA/CO/3, para. 8.

authorities to carry out an effective investigation to ascertain the fate of the disappeared person. In these circumstances, the legislation implementing the Charter constitutes, in the author's view, an additional violation of the rights of the families of disappeared persons and is certainly not a satisfactory response to the problem of disappearances, which should be based on respect for the right to the truth, justice, full redress and the preservation of the memory of the events. The author therefore reiterates that the mechanism accompanying the Charter cannot thus be invoked in respect of victims who submit a communication to the Committee, and invites the Committee to declare his communication admissible.

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

#### *Consideration of admissibility*

7.1 Firstly, the Committee recalls that the decision by the Special Rapporteur to examine the admissibility and the merits jointly (see para. 1.2 above) does not preclude their being considered separately by the Committee. The joining of the admissibility and the merits does not mean they must be examined simultaneously. Consequently, before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

7.2 Under article 5, paragraph 2 (a), of the Optional Protocol, the Committee must ascertain that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the disappearance of Farid Mechani was reported to the Working Group on Enforced or Involuntary Disappearances in 2003. However, it recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights Council, and whose mandates are to examine and report publicly on human rights situations in specific countries or territories, or 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.<sup>21</sup> Accordingly, the Committee considers that the examination of Farid Mechani's case by the Working Group on Enforced or Involuntary Disappearances does not render it inadmissible under this provision.

7.3 The Committee notes that, in the State party's view, the author has not exhausted domestic remedies, since he did not consider 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. The Committee further notes that, according to the State party, the author has written letters to political and administrative authorities, petitioned advisory or mediation bodies and petitioned representatives of the prosecution service (chief prosecutors and public prosecutors), but has not actually initiated legal action and seen it through to its conclusion by availing himself of all available remedies of appeal and judicial review. The Committee notes to this effect that, subsequent to the chief prosecutor of Bab-el-Oued Special Court summoning Farid Mechani to appear on 22 August 1993, the author asked to meet with the prosecutor to inform him of his son's disappearance, but the prosecutor refused to receive him. Less than a month later, the author once again tried to appeal directly to the prosecutor, to no avail. Nearly four months after Farid Mechani's disappearance, the author learned from the Ministry of Justice that he had been handed over to the military police. However, no case was ever brought and,

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<sup>21</sup> Communication No. 1781/2008, *Djebrouni and Berzig v. Algeria*, para. 7.2; and communication No. 540/1993, *Celis Laureano v. Peru*, para. 7.1.

despite the administrative and judicial remedies sought, the author has not obtained any information that might shed light on his son's fate. In addition, the Committee took note of the author's argument, according to which, since the entry into force of ordinance No. 06-01, the families of victims of enforced disappearances have found themselves deprived of the right to take part in court proceedings to shed light on the fate of their family member, as any such action would be liable to criminal prosecution.

7.4 The Committee recalls that the State party has a duty not only to carry out thorough investigations of alleged violations of human rights brought to the attention of its authorities, particularly enforced disappearances or violations of the right to life, but also to prosecute, try and punish anyone held to be responsible for such violations.<sup>22</sup> Although the author repeatedly contacted the competent authorities concerning his son's disappearance, the State party failed to conduct a thorough and effective investigation into Farid Mechani's disappearance, despite the fact that serious allegations of enforced disappearance were involved. The State party has also failed to provide sufficient information indicating that an effective remedy is available de facto, while ordinance No. 06-01 of 27 February 2006 continues to be applied, notwithstanding the Committee's recommendations that it should be brought into line with the Covenant.<sup>23</sup> Reiterating its previous jurisprudence, the Committee considers that to sue for damages for offences as serious as those alleged in the present case cannot be considered a substitute for the charges that should be brought by the public prosecutor.<sup>24</sup> The Committee concludes that article 5, paragraph 2 (b), of the Optional Protocol is not an obstacle to the admissibility of the communication.

7.5 The Committee considers that, for the purposes of admissibility of a communication, the author must exhaust only the effective remedies available in respect of the alleged violation, in this case, the effective remedies in respect of forced disappearance.

7.6 The Committee finds that the author has sufficiently substantiated his allegations insofar as they raise issues under articles 7, 9, 10, 14, 16 and 2, paragraph 3, of the Covenant, and therefore proceeds to consider the communication on its merits.

#### *Consideration of merits*

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

8.2 The State party provided general and collective comments on the serious allegations made by the authors of such complaints, 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 must be looked at in the broader context of the domestic sociopolitical and security environment that prevailed during a period in which the Government had to deal with terrorism. The Committee observes that the Covenant demands that the State party concern itself with the fate of every individual, and treat every individual with respect for the dignity that inheres in every human being. It further recalls its jurisprudence, according to which the State party may not invoke the provisions of the Charter for Peace and National Reconciliation against persons who invoke provisions of the Covenant or who have submitted or may submit communications to the

<sup>22</sup> Communications No. 1781/2008, *Djebrouni and Berzig v. Algeria*, para. 7.4; and No. 1905/2009, *Ouaghlissi and Khirani v. Algeria*, Views adopted on 26 March 2012, para. 6.4.

<sup>23</sup> CCPR/C/DZA/CO/3, paras. 7, 8 and 13.

<sup>24</sup> Communications No. 1588/2007, *Benaziza v. Algeria*, Views adopted on 26 July 2010, para. 8.3; No. 1781/2008, *Djebrouni and Berzig v. Algeria*, para. 7.4; and No. 1905/2009, *Ouaghlissi and Khirani v. Algeria*, para. 6.4.

Committee.<sup>25</sup> 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 Covenant.

8.3 The Committee notes that the State party has not replied to the author's claims concerning the merits of the case, and recalls its jurisprudence,<sup>26</sup> according to which the burden of proof should not rest solely on the author of a communication, especially given that the author and the State party do not always have the same degree of access to evidence and that often only the State party is in possession of the necessary information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has a duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with whatever information is available to it.<sup>27</sup> In the absence of any explanations from the State party in this respect, due weight must be given to the author's allegations, provided they have been sufficiently substantiated.

8.4 The Committee notes that, according to the author, his son Farid Mechani was arrested at his home on 16 May 1993 by six plain-clothed police officers, and then taken to the 14th district police station. The author presented himself to the Hussein Dey police station the day after his son's arrest, and on numerous subsequent occasions, and the police consistently denied that Farid Mechani was there. The family subsequently lodged administrative complaints with the Wali of Algiers, the National Observatory for Human Rights and its successor, the National Commission for the Protection and Promotion of Human Rights. The victim's family also lodged a complaint with the chief prosecutor at Algiers Special Court in Bab-el-Oued to clarify the fate of their son, but none of the steps taken since then has helped to shed light on the fate of Farid Mechani, who has not been seen since that day. The Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment,<sup>28</sup> which recommends that States parties should make provision against incommunicado detention. In the absence of a satisfactory explanation from the State party, the Committee considers that this disappearance constitutes a violation of article 7 of the Covenant with regard to Farid Mechani.<sup>29</sup>

8.5 The Committee also takes note of the anguish and distress caused to the author by Farid Mechani's disappearance. It considers that the facts before it disclose a violation with regard to him of article 7 of the Covenant.<sup>30</sup>

<sup>25</sup> Communications No. 1196/2003, *Boucherf v. Algeria*, para. 11; No. 1588/2007, *Benaziza v. Algeria*, para. 9.2; No. 1781/2008, *Djebrouni and Berzig v. Algeria*, para. 8.2; and No. 1905/2009, *Ouaghlissi and Khirani v. Algeria*, para. 7.2.

<sup>26</sup> Communications No. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, Views adopted on 26 July 2010, para. 7.4; and No. 1781/2008, *Djebrouni and Berzig v. Algeria*, para. 8.3.

<sup>27</sup> Communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.3.

<sup>28</sup> *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40)*, annex VI, sect. A.

<sup>29</sup> Communications No. 1905/2009, *Ouaghlissi and Khirani v. Algeria*, para. 7.5; No. 1781/2008, *Djebrouni and Berzig v. Algeria*, para. 8.5; No. 1295/2004, *El Awani v. Libyan Arab Jamahiriya*, Views adopted 11 July 2007, para. 6.5; and No. 1779/2008, *Mezine v. Algeria*, Views adopted on 25 October 2011, para. 8.5.

<sup>30</sup> Communications No. 1905/2009, *Ouaghlissi and Khirani v. Algeria*, para. 7.6; No. 1781/2008, *Djebrouni and Berzig v. Algeria*, para. 8.6; No. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, para. 7.5; and No. 1422/2005, *El Hassy v. Libyan Arab Jamahiriya*, View adopted on 24 October 2007, para. 6.11.

8.6 With regard to the alleged violation of article 9, the Committee notes the author's statement to the effect that Farid Mechani was arrested on 16 May 1993 by plain-clothed police officers, in the presence of his mother and neighbours, without a warrant being produced, or the reason for his arrest being disclosed; that, following his arrest, he was detained at the 14th district police station, and then, according to information obtained later by the family, was allegedly handed over to the military police the day after his arrest; Farid Mechani disappeared when he was arrested, and thus was not brought before a judge or other judicial authority, which would have enabled him to challenge the legality of his detention, and no official information was given to his family concerning his whereabouts or his fate. In the absence of satisfactory explanations from the State party, the Committee finds a violation of article 9 with regard to Farid Mechani.<sup>31</sup>

8.7 Regarding the complaint under article 10, paragraph 1, the Committee reiterates that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated with humanity and respect for their dignity. In view of Farid Mechani's incommunicado detention and in the absence of information provided by the State party in that regard, the Committee finds a violation of article 10, paragraph 1, of the Covenant.<sup>32</sup>

8.8 The author invokes article 14 of the Covenant, as Farid Mechani was tried in absentia and sentenced by Bab-el-Oued Special Court on 4 May 1994, after an unfair trial held in the absence of his family and without his lawyer being able to speak on his behalf, as she had never been able to see her client. The Committee recalls its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial,<sup>33</sup> in which it noted that the proceedings of special tribunals of "faceless judges" are often irregular, not only because the identity and status of the judges are not made known to the accused persons, but often also because of irregularities in the procedure.<sup>34</sup> In the present case, Farid Mechani was sentenced to life imprisonment after a closed trial, by a court of special jurisdiction made up of anonymous judges, and without ever being heard, as he had been a victim of enforced disappearance since his arrest a year previously. The authorities of the State party tried Farid Mechani in absentia, while he had probably been held in incommunicado detention for a year, without any investigation being conducted to establish his fate, nor any information about him being communicated to his family. In these circumstances, and in the absence of information from the State party, the Committee is of the opinion that the trial and conviction of Farid Mechani are inherently unfair and, in multiple respects, disclose a violation of article 14, paragraph 1, of the Covenant.<sup>35</sup>

8.9 With regard to the alleged violation of article 16, the Committee reiterates its established jurisprudence, according to which the intentional removal of a person from the

<sup>31</sup> Communications No. 1905/2009, *Ouaghlissi and Khirani v. Algeria*, para. 7.7; and No. 1781/2008, *Djebrouni and Berzig v. Algeria*, para. 8.7.

<sup>32</sup> General comment No. 21 (1992) on humane treatment of persons deprived of their liberty, *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40)*, annex VI, sect. B, para. 3, and communications No. 1780/2008, *Aouabdia and Zarzi v. Algeria*, Views adopted 22 March 2011, para. 7.8; and No. 1134/2002, *Gorji-Dinka v. Cameroon*, Views adopted on 17 March 2005, para. 5.2.

<sup>33</sup> *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI, para. 23.

<sup>34</sup> Communication No. 1298/2004, *Becerra Barney v. Colombia*, Views adopted on 11 July 2006, para. 7.2.

<sup>35</sup> Communications No. 1751/2008, *Aboussedra et al. v. Libyan Arab Jamahiriya*, Views adopted on 25 October 2010, para. 7.8; and No. 1782/2008, *Aboufaied v. Libya*, Views adopted on 21 March 2012, para. 7.9.

protection of the law for a prolonged period of time may constitute a refusal to recognize that person 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 (Covenant, art. 2, para. 3) have been systematically impeded.<sup>36</sup> In the present case, the Committee notes that the State party has not furnished any explanation concerning the fate or whereabouts of Farid Mechani, despite the multiple requests addressed by the author to the State party. The Committee concludes that Farid Mechani's enforced disappearance nearly 20 years ago denied him the protection of the law and deprived him of his right to recognition as a person before the law, in violation of article 16 of the Covenant.

8.10 The author invokes article 2, paragraph 3, of the Covenant, which imposes on States parties the obligation to ensure an effective remedy for all persons whose Covenant rights have been violated. The Committee attaches importance to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of rights violations. It refers to its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant,<sup>37</sup> according to which the 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, although the victim's family repeatedly contacted the competent authorities, including the judicial authorities, concerning Farid Mechani's disappearance, all their efforts led to nothing and the State party failed to conduct a thorough and effective investigation into the disappearance of the author's son, although he was arrested by officials of the State party, and he disappeared from a police station. Furthermore, the absence of the legal right to initiate judicial proceedings since the promulgation of ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation continues to deprive Farid Mechani and the author of any access to an effective remedy, since the ordinance prohibits, on pain of imprisonment, the initiation of legal proceedings to shed light on the most serious crimes, such as enforced disappearances.<sup>38</sup> The Committee concludes that the facts before it reveal a violation of article 2, paragraph 3, read in conjunction with articles 7, 9, 10, 14 and 16 of the Covenant with regard to Farid Mechani, and of article 2, paragraph 3, read in conjunction with article 7 of the Covenant, with regard to the author.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses violations by the State party of articles 7, 9, 10, 14, 16 and article 2, paragraph 3, read in conjunction with articles 7, 9, 10, 14 and 16 of the Covenant, with regard to Farid Mechani. It also finds a violation of article 7 and of article 2, paragraph 3, read in conjunction with article 7 of the Covenant, with regard to the author.

10. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author and his family with an effective remedy, including by: (a) conducting a thorough and effective investigation into the disappearance of Farid Mechani; (b) providing the author with detailed information about the results of its investigation; (c) releasing Farid Mechani immediately if he is still being detained incommunicado; (d) in the event that Farid Mechani is deceased, handing over his remains

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<sup>36</sup> Communications No. 1905/2009, *Ouaghlissi and Khirani v. Algeria*, para. 7.8; No. 1781/2008, *Djebrouni and Berzig v. Algeria*, para. 8.8; No. 1780/2008, *Aouabdia and Zarzi v. Algeria*, para. 7.9; No. 1588/2007, *Benaziza v. Algeria*, para. 9.8; No. 1327/2004, *Grioua v. Algeria*, para. 7.8; and No. 1495/2006, *Madoui v. Algeria*, Views adopted on 28 October 2008, para. 7.7.

<sup>37</sup> *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III.

<sup>38</sup> CCPR/C/DZA/CO/3, para. 7.



to his family; (e) prosecuting, trying and punishing those responsible for the violations committed; and (f) providing adequate compensation to the author for the violations suffered and to Farid Mechani, if he is still alive. Notwithstanding the terms of ordinance No. 06-01, the State party should ensure that it does not impede enjoyment of the right to an effective remedy for crimes such as torture, extrajudicial killings and enforced disappearances. The State party is also under an obligation to prevent similar violations in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure for 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 concerning the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them broadly in the official languages of the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian, as part of the Committee's annual report to the General Assembly.]

## Appendix

### Partly dissenting opinion of Committee member Mr. Víctor Rodríguez Rescia

1. Regarding communication No. 1807/2008, I agree with the decision of the Human Rights Committee to find violations of the rights set out in articles 7, 9, 10, 14, 16 and 2, paragraph 3, read in conjunction with articles 7, 9, 10, 14 and 16 of the Covenant, with regard to Farid Mechani, and of articles 7 and 2, paragraph 3, read in conjunction with article 7 of the Covenant, with regard to the author.

2. However, I believe that the Committee underestimates the effects of the existence and application in this particular case of the relevant parts (specifically, arts. 45- 46) of Ordinance No. 06-01 of 27 February 2006, implementing the Charter for Peace and National Reconciliation. The Charter, which was adopted by referendum on 29 September 2005, prohibits the taking of any legal action against members of the Algerian defence and security services for the offences of torture, extrajudicial killings and enforced disappearances. The provisions of article 45 of the Ordinance clearly impede access to justice and afford complete impunity by declaring the inadmissibility of any legal proceedings brought against “individuals or groups who are members of any branch of Algeria’s defence and security forces for actions undertaken to protect persons and property, safeguard the nation or preserve the institutions of the People’s Democratic Republic of Algeria”, stipulating that “any allegation or complaint shall be declared inadmissible by the competent legal authority”. As if this prohibition were not enough, the Ordinance establishes that 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.

3. While the Committee has recognized, in this communication and on earlier occasions, that Ordinance No. 06-01 continues to be implemented despite the Committee’s recommendations that it be brought into line with the Covenant,<sup>1</sup> and has recalled its jurisprudence whereby the State party should 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 might submit communications to the Committee,<sup>2</sup> the remedial effects of implementing the Ordinance are weak and fail to convey to the country a clear message of anti-impunity.

4. In my view, the Committee has missed an opportunity to declare explicitly that Ordinance No. 06-01 should have no bearing either on this communication or on any other past or future cases. The Committee decided that, “notwithstanding the terms of ordinance No. 06-01, the State party should ensure that it does not impede enjoyment of the right to an effective remedy for crimes such as torture, extrajudicial killings and enforced disappearances ... [and that] the State party is also under an obligation to prevent similar violations in the future”. Instead of saying this, the Committee should have made a clearer and more forceful statement valid *erga omnes*. It should have stated that the very existence of the Ordinance contravenes article 2, paragraph 3, of the Covenant and that, in accordance with article 2, paragraph 2, of the Covenant, the State party must amend its national legislation to render articles 45 and 46 of the Ordinance inapplicable.

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<sup>1</sup> CCPR/C/DZA/CO/3, paras. 7, 8 and 13.

<sup>2</sup> Communications Nos. 1196/2003, *Boucherf v. Algeria*, para. 11; 1588/2007, *Benaziza v. Algeria*, para. 9.2; 1781/2008, *Djebrouni and Berzig v. Algeria*, para. 8.2; and 1905/2009, *Ouaghliissi and Khirani v. Algeria*, para. 7.2.

5. Such a general ruling would have rendered moot many of the cases brought before the Committee for violations similar to those in the present communication and, as far as the lack of an effective remedy is concerned (Covenant, art. 2, para. 3), would have allowed them to be dealt with as a group. For those who have suffered as a result of the failure to investigate serious human rights violations, it is an unnecessary burden to have to submit their cases separately, when a general statement could have settled the matter of the non-applicability of Ordinance No. 06-01 in any future cases. Accordingly, the Committee should have stated that Algeria, in accordance with article 2, paragraph 2, of the Covenant should, “where not already provided for by existing legislative or other measures, ... take the necessary steps, in accordance with its constitutional processes and with the provisions of the ... Covenant, to adopt *such laws or other measures* as may be necessary to give effect to the rights recognized in the ... Covenant” (emphasis added).

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee’s annual report to the General Assembly.]

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