



International Covenant on Civil and Political Rights

Distr.: General
27 November 2013
English
Original: French

Human Rights Committee

Communication No. 1884/2009

Views adopted by the Committee at its 109th session (14 October–1 November 2013)

<i>Submitted by:</i>	Mouni Aouali, Feryale Faraoun and Fatiha Bouregba (represented by Track Impunity Always (TRIAL))
<i>Alleged victims:</i>	Farid Faraoun (husband, father and son, respectively, of the authors) and the authors
<i>State party:</i>	Algeria
<i>Date of communication:</i>	7 July 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's decision under rules 92 and 97 of the rules of procedure, transmitted to the State party on 16 July 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	18 October 2013
<i>Subject matter:</i>	Enforced disappearance
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to life; prohibition of torture and cruel and inhuman treatment; right to liberty and security of person; respect for the inherent dignity of the human person; recognition as a person before the law; right to privacy; right to protection of the family; and right to an effective remedy
<i>Articles of the Covenant:</i>	2 (para. 3), 6 (para. 1), 7, 9 (paras. 1–4), 10 (para. 1), 16, 17 and 23 (para. 1)
<i>Articles of the Optional Protocol:</i>	5 (para. 2 (b))

[Annex]

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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 (109th session)

concerning

Communication No. 1884/2009*

Submitted by: Mouni Aouali, Feryale Faraoun and Fatiha Bouregba (represented by Track Impunity Always (TRIAL))

Alleged victims: Farid Faraoun (husband, father and son, respectively, of the authors) and the authors

State party: Algeria

Date of communication: 7 July 2008 (initial submission)

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

Meeting on 18 October 2013,

Having concluded its consideration of communication No. 1884/2008, submitted by Mouni Aouali, Feryale Faraoun and Fatiha Bouregba 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 are Mouni Aouali (married name Faraoun), an Algerian national born on 2 March 1953; Feryale Faraoun, an Algerian national born on 28 April 1979; and Fatiha Bouregba, an Algerian national born on 14 July 1931. They claim that their husband, father and son, respectively, Farid Faraoun, born on 8 September 1951, is the victim of violations by the State party of articles 2 (para. 3), 6 (para. 1), 7, 9 (paras. 1–4), 10 (para. 1), 16, 17 and 23 (para. 1) of the International Covenant on Civil and Political Rights. They claim to be themselves the victims of violations by the State party of

* The following members of the Committee took part in the consideration of this communication: Mr. Yadh Ben Achour, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, 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, Mr. Lazhari Bouzid did not participate in the consideration of the communication.

articles 2 (para. 3), 7, 17 and 23 (para. 1) of the Covenant. The authors are represented by counsel.¹

1.2 On 10 July 2009, in accordance with rule 92 of its rules of procedure, the Committee, through its Special Rapporteur on new communications and interim measures, asked the State party not to take any measure that might hinder the exercise by the authors and members of their family of their right to submit an individual complaint to the Committee. Accordingly, the State party was requested not to invoke its national legislation, and specifically Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation, against the authors and members of their family.

1.3 On 27 October 2009, the Committee, through its Special Rapporteur on new communications and interim measures, decided not to examine the admissibility of the communication separately from the merits.

The facts as submitted by the authors

2.1 Mr. Farid Faraoun, a farmer who raised cattle in the region of Sidi Bel Abbès, had sent an appeal and request for a hearing to the security chief of the *wilaya* (governorate) of Sidi Bel Abbès in January 1996 to challenge the refusal by the authorities to recognize his election as Chair of the milk producers' association; in his view their refusal was a politically motivated act based on his support for the Front Islamique du Salut at a time when this was a legal organization.

2.2 On 11 February 1997, four criminal investigation officers from the security forces of the *wilaya* of Sidi Bel Abbès, dressed in plain clothes, armed and travelling in official vehicles, searched the Faraoun family home without a warrant. The officers forced the victim to follow them to the police station in his own vehicle. No reasons were given for his arrest. On the evening of his arrest, his wife, Mouni Aouali, learned that the family farm had been completely destroyed in the presence of a gendarmerie brigade (*Darak el Watani*) and with the help of equipment belonging to the municipality of Sidi Bel Abbès.

2.3 On 12 February 1997, criminal investigation officers dressed in plain clothes and travelling in police vehicles arrived at the family home and asked Ms. Aouali and her four children to leave the house. One of the officers told Ms. Aouali to take her papers, money and jewellery. A neighbour and some cousins of the family were then allowed to go into the house to take whatever was strictly necessary. In the presence of the police commissioner of the *wilaya* of Sidi Bel Abbès, they then proceeded to demolish the family home, where the family had lived for more than 17 years. The demolition, using bulldozers belonging to the municipality, was carried out without a court order and took several hours. The family had only their neighbours and friends to rely on for accommodation. With the destruction of Farid Faraoun's farm, the loan the family had taken out could not be repaid and the authors were left with no financial resources.

2.4 During the night of 12 February 1997, Ms. Aouali managed to secretly meet with a soldier who told her that her husband had been tortured on the night of his arrest but was still alive. He advised her to do nothing that might make the situation worse. In the following months, the family received information from various sources claiming that the victim had been injured in the leg and left eye and that he had been seen in the military hospital of Sidi Bel Abbès and then taken to the military hospital in Oran.

2.5 Since the victim's arrest, his family has tried in vain to get information from the authorities and to have an investigation launched. Two days after Farid Faraoun was

¹ The Optional Protocol entered into force for the State party on 12 December 1989.

arrested, Fatiha Bouregba went to the police station, where she was told that her son had been transferred to the town's military sector. When she went to the military sector, she was insulted and threatened with arrest by the sector commander. On 13 July 1997, Farid Faraoun's family asked the President of the National Human Rights Observatory to intervene to find him, but nothing was done in response to this request. On 8 August 1999, the victim's mother went to the *wilaya* of Sidi Bel Abbès to report her son's disappearance, but nothing was done in response. On 4 August 2005 and 8 January 2006, the victim's wife wrote to the Minister of Justice, the Minister of the Interior and the President of the Republic to ask for an investigation into what had happened to him. On 8 August 2005, the Faraoun family tried unsuccessfully to bring the case before the National Advisory Commission for the Promotion and Protection of Human Rights. On 12 August 2006, the victim's mother again denounced her son's disappearance, this time to the gendarmerie brigade of Alger Plage, and was given a "certificate of disappearance following unsuccessful inquiries and searches". Ms. Bouregba refused to accept this, and lodged an appeal with the chief of the aforementioned brigade, asking for a thorough investigation into her son's place of detention. To this day, the Faraoun family has had no news of the victim and no investigation has been opened in response to their efforts.

2.6 The authors say they have taken only limited steps for fear of reprisals. Moreover, after the promulgation on 27 February 2006 of Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation, the authors found themselves denied the legal right to initiate judicial proceedings. The authors point out that, according to the settled jurisprudence of the Committee, only effective and available remedies need to be exhausted. A remedy is only effective if it offers some prospect of success and if it would allow the authors to obtain satisfaction, and it is only available if the authors have unhindered access to it.

The complaint

3.1 The authors assert that Farid Faraoun is a victim of enforced disappearance, as he was arrested by State officials and his arrest was followed by a refusal to acknowledge that he had been deprived of liberty and by the concealment of his fate. More than 15 years after his disappearance and incommunicado detention, the chances of finding him alive seem remote and, even if his disappearance did not end in his death, the threat to his life would constitute a violation of article 6, read in conjunction with article 2, paragraph 3, of the Covenant.

3.2 The authors point out that, according to the Committee's jurisprudence, the mere fact of being subjected to enforced disappearance constitutes inhuman or degrading treatment. The anguish and suffering caused by the victim's indefinite detention and complete lack of contact with his family and the outside world amount to treatment which is contrary to article 7 of the Covenant. Moreover, according to information received by his family, Farid Faraoun was tortured after his arrest.

3.3 The disappearance of the victim was a painful and distressing experience for the authors, as they had no idea what had happened to him or whether he was really dead, and, if he was, in what circumstances he had died and, if he had been buried, where his grave was. This uncertainty is a source of deep and constant suffering, which constitutes a violation of article 7 of the Covenant, on its own and read in conjunction with article 2, paragraph 3, of the Covenant.

3.4 The authors maintain that the destruction of the family home by the authorities constitutes cruel or inhuman treatment within the meaning of article 7 of the Covenant since the house was demolished with the sole aim of intimidating them and was carried out without a court order, without giving the family time to take their furniture or personal effects out of the house, aside from the strict minimum, and without providing any

alternative accommodation. The authors were afraid to complain directly to the local courts as a result of the sector commander's threats of arrest and the particularly harsh intimidation they had suffered at the hands of the criminal investigation officers (eviction, destruction of their house and livelihood).

3.5 The authors recall the Committee's settled jurisprudence whereby any unacknowledged detention of a person constitutes a complete negation of the right to liberty and security guaranteed by article 9 of the Covenant and is an extremely serious violation of this article. The victim's arrest without a warrant on 11 February 1997 and the failure to inform him of the reasons for his arrest constitute a violation of article 9, paragraphs 1 and 2, of the Covenant. Moreover, the State party's legislation limits the period of lawful custody to 48 hours as a rule, 96 hours where the charges concern putting State security at risk, and 12 days where terrorist or subversive acts are concerned. The failure to bring the victim before a competent judicial authority constitutes a violation of article 9, paragraph 3, of the Covenant. As he was held incommunicado, with no possibility of contacting the outside world, the victim was unable to challenge the lawfulness of his detention, or ask a judge to order his release, or even ask a third party to defend him, which entails a violation of article 9, paragraph 4, of the Covenant.

3.6 Prolonged detention in a secret location also infringes the guarantees set out in article 10, paragraph 1, of the Covenant.

3.7 The authors submit that the victim, as a person subjected to enforced disappearance, has been deprived of the capacity to exercise his rights under the Covenant and to have recourse to any possible remedy as a direct consequence of the State's conduct. This should be interpreted as a refusal to recognize the victim as a person before the law, in violation of article 16 of the Covenant.

3.8 The house search and the destruction of the family home constitute illegal interference in the privacy and home of the Faraoun family, in violation of article 17 of the Covenant.

3.9 The enforced disappearance of the victim has destroyed the authors' family life, and the State party has failed in its duty to protect it, thereby violating article 23, paragraph 1, of the Covenant.

3.10 The enforced disappearance has made it impossible for Farid Faraoun to exercise his right to appeal in order to challenge the lawfulness of his detention. The authors have tried everything in their power to discover his fate and have tried all legal means to find him. In the absence of a thorough investigation into the alleged human rights violations, and in the absence of the prosecution, trial and sentencing of those responsible for these violations, the State party has violated article 2, paragraph 3, of the Covenant. Moreover, the failure to take the necessary steps to protect the rights set out in articles 6, 7, 9, 10, 16, 17 and 23 itself constitutes a violation of the rights set out in these articles read in conjunction with article 2, paragraph 3, of the Covenant.

State party's observations

4.1 On 28 August 2009, the State party contested the admissibility of the communication. It is of the view that the communication, which incriminates public officials, or persons acting on behalf of public authorities, in cases of enforced disappearance during the period in question — from 1993 to 1998 — should be considered within the broader context of the sociopolitical situation and should be declared inadmissible. The individual focus in this complaint does not reflect the national sociopolitical and security context in which the alleged events are said to have occurred, and do not reflect reality or the factual diversity of the situations covered by the generic term "enforced disappearance" during the period in question.

4.2 In this respect, and contrary to the theories propounded by international NGOs, which the State party finds to be not very objective, the painful ordeal of terrorism that the State party experienced cannot be seen as a civil war between two opposing camps; rather, it was a crisis that led to the spread of terrorism following calls for civil disobedience. This in turn led to the emergence of a multitude of armed groups engaged in terrorist crimes, acts of subversion, the destruction and sabotage of public infrastructure, and acts of terror targeting the civilian population. In the 1990s, as a result, the State party went through one of the most terrible ordeals of its young life as an independent country. In this context, and in accordance with the Constitution (arts. 87 and 91), precautionary measures were implemented, and the Algerian Government informed the Secretariat of the United Nations of its declaration of a state of emergency, in accordance with article 4, paragraph 3, of the Covenant.

4.3 During this period, terrorist attacks were a daily occurrence in the country; they were carried out by a host of ideologically driven armed groups with little in the way of hierarchy, which severely diminished the ability of the authorities to control the security situation. 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. According to a variety of independent sources, including the press and human rights organizations, 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 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.

4.4 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.

4.5 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, 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.

4.6 The State party also notes the authors' contention that it is impossible to consider that any effective and available domestic remedies exist in Algeria to which the families of victims of disappearance could have recourse, on account of 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. On this basis, the authors believed they 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 authors cannot invoke this Ordinance and its implementing legislation as a pretext for failing to institute the legal proceedings available to them. 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.²

4.7 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 introduces 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

² The State party cites in particular communications Nos. 210/1986 and 225/1987, *Pratt and Morgan v. Jamaica*, Views adopted on 6 April 1989.

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.

4.8 In addition to the establishment of the fund 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 authors' allegations are covered by the comprehensive domestic settlement mechanism provided for in the Charter.

4.9 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 in which they occurred; to find 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 the communication 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.

Authors' comments on the State party's submission

5.1 On 2 October 2012, the authors submitted their comments on the State party's submission. They point out that the State party has recognized the competence of the Committee to consider individual communications. This competence is of a general nature and its exercise by the Committee is not subject to the discretion of the State party. In particular, it is not for the State party to determine whether it is appropriate for the Committee to take up a specific case. That is for the Committee to decide when it considers the communication. The authors consider 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 prevent individuals subject to its jurisdiction from using the procedure provided for under the Optional Protocol. Even though such measures may have an impact on the settlement of a dispute, they must be studied with regard to the merits of the case and not at the admissibility stage. In the present case, the legislative measures adopted amount to a violation of the rights enshrined in the Covenant, as the Committee has previously observed.³

5.2 The authors recall that Algeria's declaration of the state of emergency on 9 February 1992 does not affect the right of persons to submit individual communications to the Committee. Article 4 of the Covenant allows for derogations from certain provisions of the Covenant during states of emergency, but does not affect the exercise of rights under the Optional Protocol. The authors therefore consider that the State party's observations on the appropriateness of the communication do not constitute a ground for inadmissibility.

³ The authors refer to the concluding observations of the Human Rights Committee concerning the third periodic report of Algeria, adopted on 1 November 2007 (CCPR/C/DZA/CO/3), paras. 7, 8 and 13. The authors also refer to communication No. 1588/2007, *Benaziza v. Algeria*, Views adopted on 26 July 2010, para. 9.2 and communication No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 11. The authors further refer to the concluding observations of the Committee against Torture concerning the third periodic report of Algeria, adopted on 13 May 2008 (CAT/C/DZA/CO/3), paras. 11, 13 and 17. Lastly, they refer to general comment No. 29 (2001) on derogations during a state of emergency, para. 1 (*Official Records of the General Assembly, Fifty-Sixth Session, Supplement No. 40, vol. I (A/56/40 (Vol. I)), annex VI*).

5.3 The authors again refer to the State party's argument that the requirement to exhaust domestic remedies requires them to institute criminal proceedings by filing a complaint with the investigating judge, in accordance with articles 72 et seq. of the Code of Criminal Procedure. They refer to an individual communication concerning the State party in which the Committee stated that "the State party has a duty not only to carry out thorough investigations of alleged violations of human rights, 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. 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".⁴ The authors therefore consider that, given the serious nature of the alleged offences, it was the responsibility of the competent authorities to take up the case. However, no action was taken, even though the authors attempted, as soon as Farid Faraoun was arrested, to make enquiries into his whereabouts, but to no avail.

5.4 Two days after her son's arrest, Fatiha Bouregba went to the police station, where she was told that her son had been transferred to the town's military sector: she then went there. She was received by the sector commander, who gave her no information on her son, and in fact was quite threatening. This climate of fear was sustained by the destruction of the family home and close surveillance of Faraoun family members. The authors nevertheless stepped up their search (see paragraph 2.4 above), but to no avail. Thus the authors cannot be accused of not having exhausted all remedies for not bringing the matter before the investigating judge and suing for damages in criminal proceedings in the case of a human rights violation of such a serious nature that the State party should not have ignored it.

5.5 As to the State party's argument that mere "subjective belief or presumption" does not exempt the authors of a communication from the requirement to exhaust all domestic remedies, the authors cite article 45 of Ordinance No. 06-01, whereby legal proceedings may not be brought against individuals or groups who are members of any branch of the defence or security forces. Any person making such a complaint or allegation is liable to a term of imprisonment of 3 to 5 years and a fine of between DA 250,000 and DA 500,000. 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 authors could have been guaranteed immunity from prosecution under article 46 of the Ordinance. As treaty body jurisprudence confirms, a reading of these provisions leads to the conclusion that any complaint regarding the violations suffered by the authors and Farid Faraoun would be not only declared inadmissible, but also treated as a criminal offence. The State party fails to provide an example of any case which, despite the existence of the above-mentioned Ordinance, has led to the effective prosecution of the perpetrators of human rights violations in a similar case.

5.6 With respect to the merits of the communication, the authors note that the State party has simply listed the sort of scenarios in which the victims of the "national tragedy" might have disappeared. Such general comments do not refute the allegations made in the present communication. In fact similar comments have been put forward in a number of other cases, which shows the State party's continuing unwillingness to consider such cases individually.

5.7 With regard to the State party's argument that it is entitled to request that the admissibility of the communication be considered separately from the merits, the authors refer to rule 97, paragraph 2, of the rules of procedure, which states that the "working group

⁴ *Benaziza v. Algeria*, para. 8.3.

or special rapporteur may, because of the exceptional nature of the case, request a written reply that relates only to the question of admissibility”. Consequently, it is not for the authors of the communication or the State party to take such decisions, which are the sole prerogative of the working group or special rapporteur. The authors consider that the present case is no different from other cases of enforced disappearance, and that admissibility should not be considered separately from the merits.

5.8 The authors recall that the State party is required to “submit to the Committee written explanations or statements that shall relate both to the communication’s admissibility and its merits”. They also recall the treaty body jurisprudence whereby in the absence of comments by the State party on the merits of the communication, the Committee may base its decision on the information in the file. The allegations submitted by the authors in their communication are corroborated by numerous reports on the security forces’ actions at the time, and by the persistent efforts of the victim’s family. In view of the State party’s involvement in the disappearance of Farid Faraoun, the authors are unable to provide additional information in support of their communication, as that information is entirely in the hands of the State party. The authors also note that the lack of any submissions from the State party regarding the merits of the case is tantamount to the State party’s acquiescence that violations were committed.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 The Committee recalls that the decision by the Special Rapporteur to examine the admissibility and the merits jointly (see paragraph 1.3 above) does not preclude their being considered separately by the Committee. The joinder of admissibility and the merits does not mean they must be examined simultaneously. Consequently, before considering any claim contained in a communication, the 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.

6.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes that, in the State party’s view, the authors have not exhausted domestic remedies, since they 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 notes that, according to the State party, the authors wrote letters to political and administrative authorities but did not actually initiate legal proceedings and see them through to their conclusion by availing themselves of all available remedies of appeal and cassation. The Committee notes the authors’ argument that they have taken only limited steps for fear of reprisals and that, after the promulgation on 27 February 2006 of Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation, the authors found themselves denied the legal right to initiate judicial proceedings. The Committee notes that, despite their fear of reprisals, the authors have made numerous inquiries, including to the competent police brigades, in an effort to shed light on the victim’s disappearance, but to no avail.

6.4 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, in particular enforced disappearances or violations of the right to life, but also

to prosecute, try and punish anyone held to be responsible for such violations.⁵ Although Farid Faraoun's family repeatedly contacted the police and political authorities about his disappearance, the State party has failed to conduct a thorough and effective investigation. The State party has also failed to provide sufficient evidence that an effective remedy is available, since Ordinance No. 06-01 of 27 February 2006 continues to be applicable despite the Committee's recommendations that it should be brought into line with the Covenant (CCPR/C/DZA/CO/3, paras. 7, 8 and 13). The Committee recalls that, for a communication to be deemed admissible, the authors must have exhausted only the remedies effective against the alleged violation – in the present case, remedies effective against enforced disappearance. In addition, 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.⁶ Given the vague wording of articles 45 and 46 of the Ordinance, and in the absence of satisfactory information from the State party about their interpretation and actual enforcement, the authors' fears about the effectiveness of filing a complaint are reasonable. In view of the above, the Committee concludes that article 5, paragraph 2 (b), of the Optional Protocol is not an obstacle to the admissibility of the communication.

6.5 The Committee considers that the authors have sufficiently substantiated their claims insofar as they raise issues under articles 6 (para. 1), 7, 9, 10, 16, 17, 23 (para. 1) and 2 (para. 3) of the Covenant, and proceeds to consider the communication on its merits.

Consideration of 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 In the present communication, the State party 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 was struggling to combat 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 jurisprudence⁷ to the effect 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 (CCPR/C/DZA/CO/3, para. 7 a).

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,⁸ 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

⁵ See, inter alia, communication No. 1791/2008, *Boudjemai v. Algeria*, Views adopted on 22 March 2013, para. 7.4.

⁶ Ibid.

⁷ See, *Boucherf v. Algeria*, para. 11; *Benaziza v. Algeria*, para. 9.2; communication No. 1781/2008; *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 8.2; and *Khirani v. Algeria*, para. 7.2.

⁸ See, inter alia, *Boudjemai v. Algeria*, para. 8.3.

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 the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with the information available to it.⁹ 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, Farid Faraoun was arrested on 11 February 1997 by four criminal investigation officers from the security forces of the *wilaya* of Sidi Bel Abbès, dressed in plain clothes, armed and travelling in official vehicles; that he was arrested without a warrant and taken to the police station in Sidi Bel Abbès; that he has not been seen by his family since then; and that, despite all the family's efforts, the authorities have provided no information on his fate. The Committee recalls that, in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, removes the person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable. 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 life of Farid Faraoun. Therefore the Committee concludes that the State party has failed in its duty to protect the victim's life, in violation of article 6, paragraph 1, of the Covenant.¹⁰

7.5 The Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment,¹¹ which recommends that States parties should make provision against incommunicado detention. It notes that, in the case in question, Farid Faraoun was arrested by Algerian criminal investigation officers on 11 February 1997, that he has had no contact with his family since then and that, according to information received by the family, he was tortured in the hours after his arrest. In the absence of a satisfactory explanation from the State party, the Committee considers that these events constitute a violation of article 7 of the Covenant in respect of Farid Faraoun.¹²

7.6 The Committee also takes note of the anguish and distress caused to the authors by Farid Faraoun's disappearance. It considers that the facts before it disclose a violation of article 7 of the Covenant in respect of them.¹³

7.7 In addition, the Committee notes the authors' claim to the effect that the family farm was destroyed by the brigade. As to the family home, the wife of Farid Faraoun and her children were apparently evicted and then watched powerless as the house they had lived in for more than 17 years was demolished and their furniture and personal effects destroyed by bulldozers, by order of State officials. The Committee notes the authors' claim that no alternative housing was provided and that the family was left in dire financial straits. The Committee notes also their claim that these acts were intended to intimidate them and that, just as with the arrest of Farid Faraoun, they did not dare complain directly to the courts at the time for fear of reprisals. The Committee notes that the State party has not refuted these allegations. The Committee recalls its general comment No. 20 (1992), stating that it did

⁹ Ibid.

¹⁰ See, inter alia, *Boudjemai v. Algeria*, para. 8.4.

¹¹ *Official Records of the General Assembly, Forty-Seventh Session, Supplement No. 40 (A/47/40)*, annex VI, sect. A.

¹² See, inter alia, *Boudjemai v. Algeria*, para. 8.5.

¹³ See, inter alia, *Boudjemai v. Algeria*, para. 8.6.

not consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied. The Committee also considered that the prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim.¹⁴

7.8 The Committee notes that, in this case, it was the authorities of the State party that destroyed the farm and demolished the family home and everything it contained; that these acts of destruction were ordered without a warrant; that the authors and their family watched powerless for several hours as the family home, in which they had lived for many years, was demolished; and that the family was provided with no alternative housing or means of subsistence. Under the circumstances, the Committee considers this act of destruction to amount to reprisals and intimidation and that the mental suffering it caused constitutes a separate violation of article 7 of the Covenant with respect to Farid Faraoun and the authors.

7.9 With regard to the alleged violations of article 9, the Committee notes the authors' claim that Farid Faraoun was arrested without a warrant; that he was not charged and was not brought before a judicial authority, which would have enabled him to challenge the lawfulness of his detention; and that no official information was given to the authors regarding his fate. In the absence of satisfactory explanations from the State party, the Committee finds a violation of article 9 in respect of Farid Faraoun.¹⁵

7.10 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 Faraoun's 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.¹⁶

7.11 With regard to the alleged violation of article 16, the Committee reiterates its settled 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 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.¹⁷ In the present case, the Committee notes that the State party has not furnished any information on the fate or whereabouts of the disappeared person despite the authors' requests to the State party. The Committee concludes that Farid Faraoun's enforced disappearance on 11 February 1997 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.

7.12 With regard to the alleged violation of article 17 of the Covenant, the Committee notes the authors' claim that criminal investigation officers from Sidi Bel Abbès searched the Faraoun family home without a warrant and that the family farm as well as the family home were completely destroyed, one in the presence of a gendarmerie brigade and the other in the presence of the police commissioner from the *wilaya* of Sidi Bel Abbès. The

¹⁴ General comment No. 20 (1992), paras. 4 and 5.

¹⁵ See, inter alia, *Boudjemai v. Algeria*, para. 8.7.

¹⁶ See general comment No. 21 (1992) on humane treatment of persons deprived of their liberty, para. 3 (*Official Records of the General Assembly, Forty-Seventh Session, Supplement No. 40 (A/47/40)*, annex VI, sect. B), and, inter alia, *Boudjemai v. Algeria*, para. 8.8.

¹⁷ See, inter alia, *Boudjemai v. Algeria*, para. 8.9.

Committee notes that the State party has made no comment on these claims. In the absence of any explanation from the State party in this respect, due weight must be given to the authors' allegations, provided that they have been sufficiently substantiated.¹⁸ The Committee concludes that the entry of State officials into the home of Farid Faroun and his family in such circumstances, as well as the destruction of their farm and home, constitutes unlawful interference with their privacy, family, and home, in violation of article 17 of the Covenant in respect of Farid Faraoun and the authors.¹⁹

7.13 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.

7.14 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,²⁰ according to which the failure by a State party to investigate allegations of violations could in itself give rise to a separate breach of the Covenant. In the present case, the authors contacted the competent authorities regarding Farid Faraoun's disappearance as soon as he was arrested. All their efforts were to no avail, however, and the State party failed to conduct a thorough and effective investigation into his disappearance. Furthermore, the absence of the legal right to initiate judicial proceedings since the promulgation of Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation continues to deprive Farid Faraoun and the authors 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 (CCPR/C/DZA/CO/3, para. 7). In view of the above, the Committee concludes that the facts before it disclose a violation of article 2 (para. 3), read in conjunction with articles 6 (para. 1), 7, 9, 10, 16 and 17 of the Covenant in respect of Farid Faraoun, and of article 2, paragraph 3, read in conjunction with articles 7 and 17 of the Covenant, in respect of the authors.

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 article 6 (para. 1), article 7, article 9, article 10 (para. 1), article 16, and article 2 (para. 3) read in conjunction with articles 6 (para. 1), 7, 9, 10 (para. 1), 16 and 17 of the Covenant in respect of Farid Faraoun. It also finds a violation of articles 7 and 17 and of article 2 (para. 3) read in conjunction with articles 7 and 17 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 authors with an effective remedy, including by: (a) conducting a thorough and effective investigation into the disappearance of Farid Faraoun; (b) providing the authors with detailed information about the results of its investigation; (c) releasing Farid Faraoun immediately if he is still being detained incommunicado; (d) in the event that Farid Faraoun is deceased, handing over his remains to his family; (e) prosecuting, trying and punishing those responsible for the violations committed; and (f) providing adequate compensation to the authors for the violations suffered, and also to

¹⁸ Communication No. 1905/2009, *Khirani v. Algeria*, Views adopted on 26 March 2012, para. 7.3.

¹⁹ See communication No. 1779/2008, *Mezine v. Algeria*, Views adopted on 25 October 2012, para. 8.10.

²⁰ *Official documents of the General Assembly, Fifty-Ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III.

Farid Faraoun 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 the victims of crimes such as torture, extrajudicial executions and enforced disappearances. The State party is also under an obligation to take steps 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.

[Adopted in English, French and Spanish, the French 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.]
