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Human Rights Committee

Communication No. 1899/2009

Views adopted by the Committee at its 110th session (10–28 March 2014)

Submitted by:	Zineb Terafi (represented by the Collectif des familles de disparu(e)s en Algérie (Collective of Families of the Disappeared in Algeria)
Alleged victim:	Ali Lakhdar-Chaouch (the author's son) and the author herself
State party:	Algeria
Date of communication:	26 June 2009 (initial submission)
Document reference:	Special Rapporteur's rule 97 decision, transmitted to the State party on 29 September 2009 (not issued in document form)
Date of adoption of Views:	21 March 2014
Subject matter:	Enforced disappearance
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Prohibition of torture and cruel or inhuman treatment, right to liberty and security of person, recognition as a person before the law and right to an effective remedy
Articles of the Covenant:	Articles 2 (para. 3), 7, 9 and 16
Article of the Optional Protocol:	Article 5 (para. 2 (b))

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (110th session)

concerning

Communication No. 1899/2009*

Submitted by:	Zineb Terafi (represented by the Collectif des familles de disparu(e)s en Algérie (Collective of Families of the Disappeared in Algeria)
Alleged victim:	Ali Lakhdar-Chaouch (the author's son) and the author herself
State party:	Algeria
Date of communication:	26 June 2009 (initial submission)

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

Meeting on 21 March 2014,

Having concluded its consideration of communication No. 1899/2009, submitted to the Human Rights Committee by Zineb Terafi 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 is Zineb Terafi (married name: Lakhdar-Chaouch). She claims that her son, Ali Lakhdar-Chaouch, an Algerian national born on 4 March 1970, is the victim of violations by the State party of articles 2 (para. 3), 7, 9 and 16 of the International Covenant on Civil and Political Rights. She also considers herself to be the

* The following members of the Committee participated in the consideration of the present communication: Mr. Yadh Ben Achour, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval and Mr. Andrei Paul Zlătescu.

Pursuant to rule 90 of the Committee's rules of procedure, Mr. Lazhari Bouzid did not participate in the consideration of the communication.

The text of a separate opinion of Mr. Salvioli and Mr. Rodríguez-Rescia (concurring) is appended to the present document.

victim of violations by the State party of articles 2 (para. 3) and 7 of the Covenant.[1] The author is represented by counsel.

1.2 On 10 May 2010, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to consider the admissibility and the merits of the case separately.

The facts as submitted by the author

2.1 On 1 April 1997, at 1 a.m., Ali Lakhdar-Chaouch, a 27-year-old orthopaedic surgeon, was arrested at his place of work, the university hospital in Kouba, while he was on duty in the emergency unit. Military security officers in civilian clothes from the Ben Aknoun Territorial Centre for Research and Investigation reportedly arrived at the hospital with an arrest warrant for Mr. Lakhdar-Chaouch. The victim's arrest took place in the presence of many witnesses, including the director of the hospital, the director of the central Algiers hospitals, the head of personnel and many nurses. The hospital director tried to obstruct the arrest, but the security officers informed her that they merely wanted to ask Mr. Lakhdar-Chaouch a few questions and that they would not hold him for long. They subsequently took him away in an unmarked white car. His family has had no news of him since.

2.2 Since 1997, the author has continued to make inquiries and file complaints in an effort to trace her son. She has visited police stations and gendarmeries in Algiers, where she was told that her son was not being detained. In July 1997, the author filed a first complaint with the El Harrach court; the complaint was subsequently dismissed. On 5 March 2000, by order of the prosecutor of the Hussein-Dey court, and following a report from the Baraki gendarmerie, a request was filed to open an investigation into a complaint against a person or persons unknown for enforced disappearance. The victim's father was interviewed by the prosecutor on 15 March 2000. The author subsequently filed a complaint with the Hussein-Dey court against the State party's agents. However, on 24 December 2000, the investigating judge dismissed the case on procedural grounds because the persons responsible for the arrest could not be identified. The witnesses should have been summoned and examined, but the author states that the hospital staff refused to testify for fear of reprisals.

2.3 On 12 February 2001, the author appealed the ruling on behalf of the Lakhdar-Chaouch family on the grounds that those responsible for the arrest could be identified and that the hospital director could be called on to testify. On 13 February 2001, the Indictments Division of the Algiers Court of Appeal granted the appeal and overturned the dismissal of 24 December 2000. The case was returned to the investigating judge, who again dismissed it on 17 November 2003, despite the testimony of the director of the hospital dated 19 January 2003. The author appealed this ruling before the Algiers Court of Appeal. On 21 April 2004, the Court granted the appeal and sent the case back to the investigating judge, who confirmed the dismissal on 15 August 2004.

2.4 On 2 July 2006, the author obtained a certificate of disappearance, issued by the gendarmerie in Baraki. Dissatisfied with this mere noting of the disappearance, she lodged a complaint with the public prosecutor of the Hussein-Dey court. She was subsequently notified on 8 February 2007 by the Baraki criminal investigation police that the certificate had been issued following a thorough investigation.

2.5 As regards administrative remedies and appeals to international bodies, on 30 June 1997, the author filed a complaint with the National Observatory for Human Rights

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

requesting it to ascertain her son's fate. The National Advisory Commission for the Promotion and Protection of Human Rights, which replaced the Observatory, took more than three years to acknowledge receipt of the complaint and finally informed the family that it would initiate an investigation. To date, the family has received no news from the Commission. The author has written repeatedly to the Algerian authorities about her son's disappearance. Letters were sent to the President of the Republic in 1997 and then in 2003. In January 2003, the author also wrote to the Minister of Justice, the Minister of the Interior and the Prime Minister, but she has never received a reply. The victim's family has contacted foreign non-governmental organizations such as the International Federation for Human Rights (FIDH) and Amnesty International. Furthermore, the author has submitted her son's case to the United Nations Working Group on Enforced or Involuntary Disappearances, but it has never been clarified.

2.6 The author further states that the Charter for Peace and National Reconciliation and its implementing legislation now prevent any recourse to justice in Algeria. Ordinance No. 06-01 precludes any possibility of legal action against State officials, since article 45 establishes the inadmissibility of any proceedings, individual or joint, against members of any branch of the defence and security forces for actions undertaken to protect persons and property, safeguard the nation and preserve the country's institutions. Under the Ordinance, "any allegation or complaint shall be declared inadmissible by the competent judicial authority".

The complaint

3.1 The author considers that her son's disappearance over 12 years ago[2] constitutes enforced disappearance in violation of articles 2 (para. 3), 7, 9 and 16 of the International Covenant on Civil and Political Rights. She also considers herself to be the victim of violations by the State party of articles 2 (para. 3) and 7 of the Covenant.

3.2 According to the Committee's jurisprudence, under article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including a thorough and effective investigation into the disappearance and fate of the author's son, his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for the author and her family for the violations suffered by the author's son. The State party is also under a duty to prosecute criminally, try and punish those held responsible for such violations. The State party is furthermore under an obligation to take measures to prevent similar violations in the future.[3]

3.3 The author maintains that, according to the Committee's jurisprudence,[4] the mere fact that the victim had been subjected to enforced disappearance constitutes inhuman or degrading treatment within the meaning of article 7 of the Covenant. Moreover, her son's disappearance of several years is a painful and distressing experience for her, as his mother. She has no idea of what has become of him and is all the more worried because her son is diabetic and may not have been receiving the necessary treatment. Given the victim's absence and the passage of time, her hope of seeing him again fades every day, causing her moral suffering such as to constitute a violation of article 7 of the Covenant also with regard to herself.

[2] At the time that this communication was submitted to the Committee (i.e., nearly 17 years ago now).

[3] Communication No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 11.

[4] See, for example, communications No. 542/1993, *N'Goya v. Zaire*, Views adopted on 25 March 1996; No. 449/1991, *Mojica v. Dominican Republic*, Views adopted on 15 July 1994; and No. 540/1993, *Laureano Atachahua v. Peru*, Views adopted on 25 March 1996.

3.4 The author recalls the Committee's settled jurisprudence[5] whereby any unacknowledged detention of a person constitutes a complete negation of the right to liberty and security guaranteed under article 9 of the Covenant. The fact that the victim's arrest on 1 April 1997 by the Ben Aknoun military security forces has not been acknowledged, that his detention is not mentioned in the police custody registers and that there has been no real and effective investigation constitutes a violation by the State party of article 9.

3.5 The author also contends that the victim has been deprived of the capacity to exercise his rights and to have recourse to any remedy. The victim has thus been removed from the protection of the law, and the State party's refusal to recognize him as a person before the law is a violation of article 16 of the Covenant.

3.6 The Lakhdar-Chaouch family has never ceased to contact the Algerian authorities in order to ascertain what has become of their son since his disappearance. In the absence of thorough investigations into the alleged human rights violations, the State party has violated articles 7, 9, 16 and 2 (para. 3) of the Covenant.

State party's observations on admissibility

4.1 On 3 May 2010, 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 does not reflect the actual nature 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 views as not being 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 that 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 Algerian 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. Hence 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 disappearance in Algeria during the period in question encompasses six possible scenarios, none of which

[5] See, for example, communications No. 612/1995, *Vicente et al. v. Colombia*, Views adopted on 29 July 1997; *N'Goya v. Zaire*; *Laureano Atachahua v. Peru*; and No. 563/1993, *Andreu v. Colombia*, Views adopted on 27 October 1995.

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 had 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. Lastly, 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 encompassed 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, taking account of all persons who had disappeared in the context of the "national tragedy", and under which 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 has been paid out as compensation to all the victims concerned. In addition, a total of 1,320,824,683 dinars 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 law. The State party observes that, as may be seen from the author's 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 institutes criminal proceedings if they are warranted. 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 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 — makes it impossible to consider that any

effective domestic remedies exist in Algeria to which the families of victims of disappearance could have recourse . On this basis, the author believed she did not need to bring the matter before the relevant courts in view of what the author presumed would be the courts' position and findings regarding the application of the ordinance. However, 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 that all domestic remedies be exhausted.[6]

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, whose 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 the beneficiaries of disappeared persons to receive compensation as victims of the "national tragedy". Social and economic measures have also been put in place, including the provision of employment placement assistance and compensation for all persons considered to be victims of the "national tragedy". Finally, the Ordinance prescribes political measures, such as a provision under which any person who exploited religion in the past in a way that contributed to the "national tragedy" is barred from engaging in political activity, and establishes the inadmissibility of any proceedings brought against individuals or groups who are members of any branch of the country'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 by that tragedy. 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.

4.9 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 cases such as that 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 author seek an alternative remedy.

[6] The State party cites, in particular, communications No. 210/1986 and No. 225/1987, *Pratt and Morgan v. Jamaica*, Views adopted on 6 April 1989.

Author's comments on the State party's submission

5.1 On 3 December 2012, the author submitted her comments on the State party's observations. First of all, the author wishes to draw the Committee's attention to the general nature of the State party's response, which is simply a copy of the arguments that it has presented systematically for all the individual communications pending before the Committee since the Charter and its implementing legislation came into effect. She claims that Algeria has failed to take into account the Committee's requirement that States must provide specific responses and pertinent evidence in reply to the contentions of the author of a communication.

5.2 The author emphasizes that, according to the settled jurisprudence of the Human Rights Committee[7] only effective and available remedies within the meaning of article 2, paragraph 3, need to be exhausted. Concerning the State party's contention that domestic remedies have not been exhausted, the author recalls that the Lakhdar-Chaouch family, in accordance with Algerian legal procedure, submitted numerous appeals, all of which proved ineffective. Of the numerous judicial and non-judicial complaints lodged between 1998 and 2006, none resulted in a diligent investigation or criminal proceedings, although they concerned serious allegations of enforced disappearance. Although it is incumbent upon the State to show that it has actually fulfilled its obligation to carry out an investigation, the Algerian authorities have provided no specific response concerning the situation of Ali Lakhdar-Chaouch; they have merely given a general response instead. The State has adduced no tangible evidence that a genuine effort was made to search for the author's son and to identify those responsible for his disappearance.

5.3 The author refers to the State party's argument that the requirement to exhaust domestic remedies entails the author suing for damages in criminal proceedings by filing a complaint with the investigating judge. She recalls that she lodged numerous complaints with the El Harrach court and the Hussein-Dey court, all of which were dismissed. In addition, she refers to previous decisions of the Committee regarding cases of enforced disappearance in which it stated that to sue for damages for offences as serious as those alleged in the present case could not be considered a substitute for the charges that should be brought by the public prosecutor.[8] It was up to the prosecutor himself to conduct a thorough investigation.

5.4 With regard to the State party's argument that a person's mere subjective belief in, or presumption of, the futility of a remedy does not exempt that person from the requirement that all domestic remedies be exhausted, the author refers to article 45 of Ordinance No. 06-01, which precludes any possibility of legal action against agents of the State. According to the Committee's jurisprudence,[9] Ordinance No. 06-01, without the amendments recommended, appears to promote impunity and therefore cannot, as it currently stands, be considered compatible with the Covenant. The victims have thus exhausted all available domestic remedies.

[7] See, for example, communications No. 1780/2008, *Zarzi v. Algeria*, Views adopted on 22 March 2011, para. 6.3; and No. 1811/2008, *Djebbar and Chihoub v. Algeria*, Views adopted on 31 October 2011, para. 7.3.

[8] See, for example, communications No. 1753/2008, *Guezout et al. v. Algeria*, Views adopted on 19 July 2012, para. 7.4; and No. 1905/2009, *Khirani v. Algeria*, Views adopted on 26 March 2012, para. 6.4.

[9] See, for example, *Guezout et al. v. Algeria*, para. 8.2 and *Khirani v. Algeria*, para. 7.2.

5.5 The author also recalls that, according to the Committee's jurisprudence, the State party may not invoke the provisions of the Charter for Peace and National Reconciliation against persons who have submitted communications to the Committee.[10]

Issues and proceedings before the Committee

Consideration of admissibility

6.1 First, the Committee recalls that the decision by the Special Rapporteur to examine the admissibility and the merits jointly (see para. 1.2) does not preclude their being considered separately by the Committee. The joint consideration of the admissibility and the merits does not mean that 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.

6.2 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. It notes that the disappearance of Ali Lakhdar-Chaouch was reported to the United Nations Working Group on Enforced or Involuntary Disappearances (para. 2.5 above). However, it recalls that extra-conventional procedures or mechanisms which are 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.[11] Accordingly, the Committee considers that the examination of Ali Lakhdar-Chaouch's case by the Working Group on Enforced or Involuntary Disappearances does not render the communication inadmissible under this provision.

6.3 The Committee notes that, in the State party's view, the author has not exhausted domestic remedies, since she 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 also notes that, according to the State party, the author has written letters to political and administrative authorities but has not, strictly speaking, initiated legal action and seen it through to its conclusion by availing herself of all available remedies of appeal and judicial review. However, the Committee takes note of the author's argument that the Lakhdar-Chaouch family lodged numerous complaints with judicial bodies between 1998 and 2006 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, she no longer had the legal right to undertake judicial proceedings.

6.4 The Committee recalls that the State party has a duty not only to carry out thorough investigations into 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.[12] Although Ali Lakhdar-Chaouch's family repeatedly contacted law enforcement and political authorities concerning his disappearance, the State party failed to conduct a thorough and effective

[10] Ibid.

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

[12] See, for example, communication No. 1791/2008, *Boudjemai v. Algeria*, Views adopted on 22 March 2013, para. 7.4.

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 applied despite the Committee's recommendations that it should be brought into line with the Covenant.[13] The Committee recalls that, for the purposes of admissibility of a communication, the author must exhaust only the remedies effective against the alleged violation – in the present case, remedies effective against enforced disappearance. Moreover, the Committee recalls 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.[14] 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 author's fears about the effectiveness of filing a complaint are reasonable. In the light of all these considerations, the Committee concludes that article 5, paragraph 2 (b), of the Optional Protocol is not an obstacle to the admissibility of the present communication.

6.5 The Committee considers that the author has sufficiently substantiated her claims insofar as they raise issues under articles 7, 9, 16 and article 2, paragraph 3, of the Covenant and therefore proceeds to consider the communication on the 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 case, 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 disappearances from 1993 to 1998 should be considered within the broader context of the sociopolitical situation and security conditions that prevailed in the country during a period when the Government was struggling to combat terrorism. The Committee observes that the Covenant requires the State party to concern itself with the fate of each individual and to treat each individual with respect for the inherent dignity of the human person. It further recalls its jurisprudence,[15] 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 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.[16]

7.3 The Committee notes that the State party has not replied to the author's claims concerning the merits of the case and recalls that, according to its jurisprudence,[17] 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

[13] Concluding observations of the Human Rights Committee, Algeria, CCPR/C/DZA/CO/3, 12 December 2007, paras. 7, 8 and 13.

[14] See, for example, *Boudjemai v. Algeria*, para. 7.4.

[15] *Boucherf v. Algeria*, para. 11; communications No. 1588/2007, *Benaziza v. Algeria*, Views adopted on 26 July 2010, para. 9.2; No. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 8.2; and *Khirani v. Algeria*, para. 7.2.

[16] See the concluding observations of the Human Rights Committee, Algeria, CCPR/C/DZA/CO/3, 1 November 2007, para. 7 (a).

[17] See, for example, communications No. 161/1983, *Herrera Rubio v. Colombia*, Views adopted on 2 November 1987, para. 10.5, and No. 1412/2005, *Butovenko v. Ukraine*, Views adopted on 19 July 2011, para. 7.3.

and that often only the State party is in possession of the necessary information. It follows from 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 the information available to it.[18] 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.

7.4 The Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls in this regard its general comment No. 20 (1992) on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment,[19] in which the Committee recommends that States parties should make provision against incommunicado detention. The Committee notes that, in the present case, Ali Lakhdar-Chaouch was arrested by Algerian military security officers on 1 April 1997 and that he has had no contact with his family since then. 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 Ali Lakhdar-Chaouch.[20]

7.5 The Committee also takes note of the anguish and distress caused to the author, the mother of Ali Lakhdar-Chaouch, by his disappearance. The Committee therefore considers that the information before it discloses a violation of article 7 of the Covenant with regard to the author.[21]

7.6 With regard to the alleged violations of article 9, the Committee notes the author's claim that the victim's arrest on 1 April 1997 by the Ben Aknoun military security forces has never been acknowledged, that his detention is not mentioned in the police custody registers and that there has been no real and effective investigation by the State. In the absence of satisfactory explanations from the State party, the Committee finds a violation of article 9 in respect of Ali Lakhdar-Chaouch.[22]

7.7 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.[23] In the present case, the Committee notes that the authorities of the State party have not provided the author with any information on the fate or whereabouts of Ali Lakhdar-Chaouch despite the author's requests to various State party authorities. The Committee concludes that Ali Lakhdar-Chaouch's enforced disappearance since 1 April 1997 has 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.

7.8 The author invokes article 2, paragraph 3, of the Covenant, which imposes on States parties an obligation to ensure an effective remedy for all persons whose rights under the Covenant 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 recalls its general comment No. 31 (2004) on the nature of the

[18] See, for example, *Boudjemai v. Algeria*, para. 8.3.

[19] *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40*, (A/47/40), annex VI, sect. A.

[20] *Boudjemai v. Algeria*, para. 8.5.

[21] *Boudjemai v. Algeria*, para. 8.6.

[22] *Boudjemai v. Algeria*, para. 8.7.

[23] *Boudjemai v. Algeria*, para. 8.9.

general legal obligation imposed on States parties to the Covenant,[24] which states that a failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. All the steps taken have proved futile, and the State party has failed to conduct a thorough and effective investigation into the disappearance. Furthermore, the absence of the legal right to undertake judicial proceedings since the promulgation of Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation continues to deprive Ali Lakhdar-Chaouch and the author of any access to an effective remedy, since the Ordinance prohibits, on pain of imprisonment, the initiation of legal proceedings with a view to shedding light on the most serious crimes, such as enforced disappearances.[25] In view of the above, the Committee concludes that the information before it discloses a violation of article 2, paragraph 3, read in conjunction with articles 7, 9, and 16 of the Covenant in respect of Ali Lakhdar-Chaouch and a violation of article 2, paragraph 3, read in conjunction with article 7 of the Covenant in respect of the author.

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

9. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy including by: (a) conducting a thorough and effective investigation into the disappearance of Ali Lakhdar-Chaouch; (b) providing the author with detailed information about the results of its investigation; (c) releasing the victim immediately if he is still being held incommunicado; (d) if Ali Lakhdar-Chaouch 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 author for the violations suffered and to Ali Lakhdar-Chaouch if he is still alive. Ordinance No. 06-01 notwithstanding, the State party should also ensure that it does not impede enjoyment of the right to an effective remedy for the victims of crimes such as torture, extrajudicial killings and enforced disappearances. The State party is also under an obligation to 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 information from the State party, within 180 days, 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.]

[24] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, Vol. I (A/59/40 (Vol. I)), annex III.

[25] CCPR/C/DZA/CO/3, para. 7.

Appendix

Separate opinion of Mr. Fabián Omar Salvioli and Mr. Víctor Manuel Rodríguez Rescia (concurring)

1. We share the opinion of the Committee and the conclusions that it has reached in *Lakhdar-Chaouch v. Algeria* (communication No. 1899/2009). Consistent with what we have stated on several occasions in similar cases,[a] we also consider that, in the present instance, the Committee should have indicated that, by adopting Ordinance No. 06-01, certain provisions of which — in particular article 46 — are clearly incompatible with the Covenant, the State has failed to comply with the general obligation set forth in article 2, paragraph 2, of the Covenant. The Committee should also have found a violation of article 2, paragraph 2, read in conjunction with other substantive provisions of the Covenant. With regard to redress, we consider that the Committee should have recommended that the State bring Ordinance No. 06-01 into line with the Covenant.

2. Moreover, in the present case, the Committee should have found a violation of article 6 of the Covenant, given that the State has failed in its duty to guarantee the right to life. Had the Committee reached that conclusion, its position would have been consistent with its jurisprudence in previous cases — some involving the same State party — which involve facts and events that are identical in nature to those of the *Lakhdar-Chaouch* case.[b] Furthermore, during the same session at which the present conclusions were adopted, in a similar case of enforced disappearance, the Committee reached a different conclusion even though the proven facts were the same.[c]

3. We have repeatedly maintained that, when faced with proven facts in a case file, the Committee's application of the Covenant should not be limited by the parties' legal arguments. Thus, the Committee has acted correctly on various occasions,[d] although on others, such as the present Lakhdar-Chaouch case, the Committee has decided to restrict the scope of its deliberations without providing valid reasons for doing so.

4. For reasons set out previously in respect of similar cases, to which we refer the reader in order to avoid repeating them here, we consider that, in the present case, the Committee should also have found that, by adopting Ordinance No. 06-01, the State has violated various substantive Covenant rights under article 2, paragraph 2.[e] Consequently, in the paragraph on redress, the Committee should have recommended that the State party bring Ordinance No. 06-01 into line with the provisions of the Covenant.

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[a] See, for example, our joint separate opinion in *Mihoubi v. Algeria*, communication No. 1874/2009.

[b] See, for example, communications No. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011 and No. 1798/2008, *Azouz v. Algeria*, Views adopted on 25 July 2013.

[c] See communication No. 1889/2009, *Marouf v. Algeria*, Views adopted on 21 March 2004, paras. 7.4 and 8.

[d] Simply by way of example, see Human Rights Committee communications No. 1390/2005, *Koreba v. Belarus*, Views adopted on 25 October 2010; 1225/2003, *Eshonov v. Uzbekistan*, Views adopted on 22 July 2010, para. 8.3; No. 1206/2003, *R.M. and S.I. v. Uzbekistan*, Views adopted on 10 March 2010, paras. 6.3 and 9.2, with a finding of no violation; No. 1520/2006, *Mwamba v. Zambia*, Views adopted on 10 March 2010; No. 1320/2004, *Pimental et al. v. Philippines*, Views adopted on 19 March 2007, paras. 3 and 8.3; No. 1177/2003, *Ilombe and Shandwe v. Democratic Republic of the Congo*, Views adopted on 17 March 2006, paras. 5.5, 6.5 and 9.1; 973/2001, *Khalilova v. Tajikistan*, Views adopted on 30 March 2005, para. 3.7; and No. 1044/2002, *Shukurova v. Tajikistan*, Views adopted on 17 March 2006, para. 3.

[e] See our separate opinion in *Mihoubi v. Algeria*, communication No. 1874/2009.

5. We consider that the Committee must ensure consistency in decisions concerning equally proven facts, in the effective implementation of the Covenant and in redress to prevent a recurrence of the events. It is by acting with the appropriate legal clarity that the Human Rights Committee will better fulfil its task of making sure that States parties respect and uphold the rights contained in the Covenant.

[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.]