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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2157/2012*, **

Submitted by:	Rafik Belamrania (represented by Alkarama)
Alleged victims:	Mohammed Belamrania (author's father) and the author
State party:	Algeria
Date of communication:	9 May 2012 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 11 June 2012 (not issued in document form)
Date of adoption of Views:	27 October 2016
Subject matter:	Summary execution
Procedural issues:	State party's failure to cooperate
Substantive issues:	Right to an effective remedy; right to life; prohibition of torture and cruel or inhuman treatment
Articles of the Covenant:	2 (3), 6 (1) and 7
Articles of the Optional Protocol:	5 (2) (b)

* Adopted by the Committee at its 118th session (17 October-4 November 2016).

** The following members of the Committee participated in the consideration of the communication: Yadh Ben Achour, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez Rescia, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. In accordance with article 90 of the Committee's rules of procedure, Lazhari Bouzid, member of the Committee, did not take part in the consideration of the communication.

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1.1 The author of the present communication is Rafik Belamrania, born on 22 July 1979 in Taher, in Jijel Province (Algeria), and residing in the Aljazeera housing estate in the municipality of El Kennar Nouchfi in Jijel Province. He is represented by the Alkarama Foundation.

1.2 The author submits the present communication on behalf of his father, Mohammed Belamrania, born in 1951, who was arrested at his home by the special forces of the Algerian army on 13 July 1995 and summarily executed some days later, on an unspecified date.

1.3 On 11 June 2012, referring to rule 92 of the Committee's rules of procedure, the Committee reminded the State party that the right to submit communications could not be called into question under national law and that the State party should, therefore, refrain from invoking national legislation, including Order No. 06-01 on the implementation of the Charter for Peace and National Reconciliation, against the author and members of his family.[1, 2]

The facts as submitted by the author

2.1 The author states that, like many cities and rural areas in Algeria, Jijel Province has seen systematic mass violations of human rights. Jijel is a mountainous region in the eastern part of the country. During the 1990s, thousands of people were victims of summary execution, arbitrary arrest and enforced disappearance. The author adds that, during the years of conflict, a climate of widespread terror prevailed in this remote region, where there was a strong military presence, which undoubtedly explains why, despite the large number of summary executions performed there, so few cases were reported. In most cases, the fear of reprisals by the authorities prevented families from taking steps to find their missing family members.

2.2 According to evidence provided by members of the victim's family, some 30 armed and uniformed paratroopers from the Fifth Airborne Battalion of the Algerian People's National Army raided Mohammed Belamrania's house on the night of 13 to 14 July 1995 at around 9.30 p.m. and arrested him. They were accompanied by two hooded persons, probably informants from the village acting as guides.

2.3 The soldiers ordered Mohammed Belamrania to take his Peugeot 404 commercial vehicle out of the garage. Two of the soldiers then climbed in next to the victim and ordered him to drive to the barracks. The other soldiers left on foot for the barracks located in the middle of the village in a shopping centre requisitioned by the Algerian army, a mere 100 metres from the victim's house.

2.4 The victim's wife asked the officer in charge of the operation why her husband had been arrested and where he would be taken; the officer replied that he was just being questioned at the barracks in the village and would then quickly be released. However, Mohammed Belamrania's screams and pleas for mercy could be heard all night throughout the village and as far as the family home, conveying a clear sense of the torture he was undergoing.

2.5 The following afternoon, Mohammed Belamrania was taken to an unknown location in a military convoy along with other civilians, who had also been detained in the shopping centre.

2.6 A few days later, several persons who had been arrested at the same time as the victim and who lived in the same village, were released upon the intervention of a high-ranking army officer, Colonel B.B., who was a relative of theirs.[3] The persons informed Mohammed Belamrania's family that until their release they had been detained at the El Milia barracks, some 50 km from the village. They also stated that Mohammed Belamrania

[1] See the author's request to that effect in paragraphs 3.4 and 3.5 below.

[2] The Covenant and the Optional Protocol thereto entered into effect for the State party on 12 December 1989.

[3] The author gives the names of the released prisoners.

and many other people arrested in similar circumstances had still been at the military detention centre at the time of their release.

2.7 The next day, the victim's wife, together with the victim's elder brother, Youssef Belamrania, therefore went to the El Milia barracks to enquire about his fate and request his release. The soldier on duty at the entrance of the barracks told them that no one was being detained there and, when they insisted, threatened to "eliminate" them if they persisted in their efforts to find out the truth.

2.8 Over the next few days, the victim's wife and other members of the family made many attempts to inform the local military authorities of the arrest and to request them to take action to release Mohammed Belamrania. Each time, their request was rejected.

2.9 On 24 July 1995, i.e. 11 days after Mohammed Belamrania's arrest, his brother Youssef Belamrania was informed by a relative that the corpses of several persons who had been summarily executed by members of the Fifth Airborne Battalion stationed at the El Milia barracks had been dumped onto the side of the road in a place called Tenfdour and that one of the corpses had light brown hair and could be that of his brother. Youssef Belamrania, together with other members of the family, went to the scene and was able to identify his brother, Mohammed Belamrania, among the many mutilated corpses dumped at the side of the national highway. The victim, whose hands were tied behind his back with metal wire, was riddled with bullets and bore unmistakable signs of torture. All the other bodies found in the same place also showed signs of torture and mutilation.

2.10 Youssef Belamrania immediately went to the central police station of El Milia, where he notified the authorities of the discovery of the mutilated bodies, including that of his brother. After a long wait, the police had the civil protection services remove the numerous bodies to the morgue of the local hospital of El Milia.

2.11 Youssef Belamrania also went to the court of El Milia to notify the public prosecutor of the discovery of the bodies of the victims who had been shot to death, hoping that the public prosecutor would take action on the matter. He told him of the many witnesses who knew about the execution of a large number of victims carried out by the paratroopers by the side of the highway. The public prosecutor merely requested Mohammed Belamrania's relatives to return to the hospital morgue for positive identification of the body in the presence of the police.

2.12 After performing the identification, the family requested an autopsy to determine the cause of death for legal purposes and asked for the body to be returned to them for burial at El Kennar cemetery. At that stage, the police officers, on the instructions of the public prosecutor, demanded the payment of 120,000 Algerian dinars in return for the body and a written acknowledgement that the victim belonged to a terrorist group. The author stresses that racketeering of this kind was particularly widespread in the country, with the national security forces engaged in outright blackmail of the families of victims of summary executions.

2.13 In response to the unanimous protests of the relatives and their refusal to pay the amount demanded by the police or to sign the acknowledgement demanded of them, the body was eventually returned to the family without an autopsy being conducted. The coffin was sealed by the police with a ban on opening it; the relatives received a burial permit issued by the public prosecutor of El Milia along with a permit to transport the mortal remains.[4]

2.14 Although where a violent death was concerned the public prosecutor's office was required to order an autopsy, the victim's body was buried at El Kennar cemetery without the autopsy requested by the family being conducted.[5]

2.15 The victim left behind a widow and 10 underage children. The eldest, Rafik Belamrania, the author of this communication, was 16 years old at the time and his

[4] The author has included the relevant documents in the file.

[5] The written burial permit issued by the public prosecutor attached to the El Milia court states that "it is not useful, for the establishment of the truth, to delay the interment of Mohammed Belamrania's remains".

youngest sister only 3. Given the climate of terror prevailing in the region at the time, it was particularly difficult for the victim's wife to undertake all the necessary steps to have the summary execution of her husband by members of the Algerian army recognized. It was therefore the victim's brother, Youssef Belamrania, who attempted to initiate proceedings to have the murder recognized and apply for a death certificate for the civil register of the municipality of El Kennar. A few days after his brother's funeral, he appealed in person to the public prosecutor's office in El Milia to open an investigation into his brother's death. After the public prosecutor suggested he submit a written request, Youssef Belamrania filed a formal complaint on 1 August 1995, along with a request for his brother's death to be recorded in the civil register.[6]

2.16 Upon receipt of the request, the public prosecutor attached to the El Milia court, as the competent authority, simply ordered that the death be recorded in the civil register without requiring an investigation or the prosecution of the perpetrators.[7]

2.17 The author notes that he has exhausted all available remedies, which all proved equally ineffective. The only remedy available to the family in this case of extrajudicial execution was to apply to the public prosecutor's office with jurisdiction over the territory in order to file a formal complaint and request it to open an investigation. Youssef Belamrania, the victim's brother, filed a formal complaint and suggested that the public prosecutor's office should hear several witnesses, who were prepared to attest to having seen the soldiers take many persons away from the barracks in a truck. Other witnesses had seen the soldiers line up many persons, whose hands were tied behind their backs with metal wire, along the road in Tenfdour (El Milia) and summarily execute them using automatic weapons. Yet the public prosecutor's office never took into consideration these statements or followed up on the family's requests. The victim's brother went to the public prosecutor's office several times to enquire about the action taken with regard to his complaint, but he was given no information and no investigation was initiated.

2.18 Hamama Laouar, Mohammed Belamrania's widow, found herself having to raise and provide for her 10 underage children alone after the death of her husband, who had been the sole provider for the family. In 2006, following the adoption of the order on national reconciliation, which provided for compensation for the "victims of the national tragedy", she applied to the authorities for compensation, recalling that her husband had been executed by soldiers in the performance of their duties and that she and her family were also victims of the "national tragedy". The authorities refused to acknowledge the soldiers' responsibility in the events and suggested that she initiate a procedure to have her husband declared missing, which would enable her to receive compensation. She then handed over the documents in her possession, including a copy of the certified statement on the registration of death in the civil register issued by the public prosecutor of El Milia and the death certificate issued on 27 August 1995.

2.19 Even though it is clearly not a case of enforced disappearance but one of extrajudicial execution by military personnel, a missing person report was issued to the family by the El Kennar National Gendarmerie unit,[8] wrongly establishing that the victim had disappeared and that an investigation carried out by the Gendarmerie had not yielded any results. It is under these circumstances that Hamama Laouar sent a letter dated 3 July 2007 to the Director of Legal Affairs of the Ministry of Defence, along with the missing person report issued by the Gendarmerie and other documents in the file, in an attempt to argue that her husband had been the victim of an extrajudicial execution by the military rather than of enforced disappearance. In the same letter she requested that an investigation be launched into the crime against her husband.

2.20 The only response Hamama Laouar received came eight months later, on 10 March 2008, and consisted in a succinct letter signed by the Director of Legal Affairs of the Ministry of Defence asking her to transmit the "entire file on her husband and all necessary information" in order for him to reply, when in fact all the documents in Hamama Laouar's

[6] The request is attached to the file.

[7] Documents attached.

[8] Enclosed by the author.

possession had already been sent to him.[9] It thus became clear that the most senior army officers were refusing to open an investigation into the facts of the case before them, of which they could not be unaware given the widespread nature of this type of practice.

2.21 Although Mohammed Belamrania's execution is obviously criminal in nature, both the Gendarmerie and the justice system failed to conduct an appropriate investigation. They are thus responsible for failing not only to comply with the State party's international commitments but also to enforce its domestic legislation, given that article 63 of the Code of Criminal Procedure states that "when an offence is brought to their attention, criminal police officers, acting either on the instructions of the public prosecutor or on their own initiative, shall undertake preliminary inquiries."[10]

2.22 Despite all the family's efforts, no serious investigation has been undertaken, nor have those responsible for Mohammed Belamrania's execution been held to account. Subsidiarily, the author emphasizes that it is now legally impossible, in the light of the promulgation of Order No. 06-01 on the implementation of the Charter for Peace and National Reconciliation, for him to bring an action before the judicial authorities, with the result that not only have domestic remedies proved useless and ineffective, they have now become totally unavailable. The Charter stipulates that "no one, whether in Algeria or abroad, has the right to use or make use of the wounds caused by the national tragedy in order to undermine the institutions of the People's Democratic Republic of Algeria, weaken the State, impugn the integrity of all the agents who have served it with dignity, or tarnish the image of Algeria abroad" and rejects "all allegations holding the State responsible for deliberate disappearances". The Charter further provides that "reprehensible acts on the part of agents of the State, which have been punished by law whenever they have been proved, cannot be used as a pretext to discredit the security forces as a whole, who were doing their duty for their country with the support of its citizens".

2.23 The author further argues that, since the Order implementing the Charter for Peace and National Reconciliation, promulgated on 27 February 2006, prohibits the opening of legal proceedings, on pain of criminal prosecution, the victims are relieved of any obligation to exhaust domestic remedies. Article 45 of the Order in fact prohibits any complaint of disappearance or other offences, stipulating that "no individual or class action may be taken against members of any branch of the defence and security forces of the Republic for actions carried out to protect persons and property, safeguard the nation and preserve the institutions of the People's Democratic Republic of Algeria". Pursuant to this provision, all reports and complaints must be found inadmissible by the competent judicial authority. Furthermore, article 46 of the Order establishes that "anyone who, through his or her spoken or written statements or any other act, uses or makes use of the wounds caused by the national tragedy to undermine the institutions of the People's Democratic Republic of Algeria, weaken the State, impugn the honour of its agents who served it with dignity or tarnish the image of Algeria abroad shall be liable to a term of imprisonment of 3 to 5 years and a fine of 250,000 to 500,000 Algerian dinars. Criminal proceedings shall be automatically initiated by the public prosecutor's office. The penalty shall be doubled for repeat offences."

2.24 The author adds that the effect of this law is to grant amnesty for crimes committed in the past decade, including the worst offences such as summary executions. Moreover, the law prohibits, subject to a penalty of imprisonment, the use of the justice system to establish the fate of victims.[11] In other words, the Algerian authorities, including the judicial system, are manifestly refusing to establish the responsibility of the armed forces, members of which carried out the summary execution of Mohammed Belamrania, a refusal which counters the effectiveness of the remedies sought by the family.

[9] Letter enclosed by the author.

[10] Order No. 66-155 of 8 June 1966 on the amended Code of Criminal Procedure.

[11] The author refers to the Committee's concluding observations on the third periodic report of Algeria, which state that "Order No. 06-01 …, which prohibits any prosecution of members of the defence or security force, seems thus to promote impunity and infringe the right to an effective remedy" (see CCPR/C/DZA/CO/3, paras. 7 and 8).

The complaint

3.1 The author initially invokes the right to an effective remedy, under article 2 (3) of the Covenant. Despite having been contacted on many occasions by the author, the competent judicial and administrative authorities have failed to investigate the allegation that the victim was executed. The author adds that the State party has failed to fulfil its obligation to clarify and resolve all the cases of human rights violations submitted to the Committee, in many cases of enforced disappearance or extrajudicial executions. He further points out that, since February 2006, pursuant to the Order on the implementation of the Charter for Peace and National Reconciliation, the prosecution of members of any branch of the Algerian defence and security forces is prohibited, which constitutes an infringement of the obligation by States to ensure the enjoyment of Covenant rights, of which the right to an effective remedy is a major component. The author concludes that the State party has failed to meet its obligation under article 2 (3) of the Covenant with regard to Mohammed Belamrania.

3.2 The author adds that the execution of Mohammed Belamrania by agents of the Algerian State constitutes, in essence, a violation of his right to life. He maintains that the State party, pursuant to its accession to the Covenant, should have taken steps to prevent all arbitrary executions by State security forces, given the extreme seriousness of such acts. In this case, the victim died as a result of a deliberate action by the Algerian army. The State party's failure to fulfil its duty to safeguard the right to life is compounded by its failure to make any effort whatsoever to investigate and shed light on the summary execution of Mohammed Belamrania.

3.3 The author also invokes the right to not be subjected to cruel, inhuman or degrading treatment under article 7 of the Covenant. He recalls that Mohammed Belamrania was held at the barracks in El Kennar, where he was tortured throughout the night following his arrest. His screams while he was being tortured could be heard as far away as the village. Some 10 days later, his body was found at Tenfdour (El Milia), bearing visible traces of torture in addition to bullet wounds. The victim must have been aware of how his arrest might end given that the practice of summarily executing persons arrested by the army was widespread at the time. Thus, the time leading up to his execution must have been one of terrible anguish and suffering. Being arbitrarily torn from his family and then taken by force to be tortured and summarily executed amounts to cruel, inhuman and degrading treatment and therefore constituted a violation of article 7 of the Covenant with regard to Mohammed Belamrania.

3.4 The author is afraid that the present procedure before the Committee may serve as a pretext for the Algerian authorities to persecute him for attempting to shed light on the circumstances of his father's execution. He further fears that he has exposed himself even more to reprisals from the authorities through his efforts at the national level to determine the responsibility of State agents in his father's summary execution, insofar as articles 45 and 46 of Order No. 06-01 of 27 February 2006 on the implementation of the Charter for Peace and National Reconciliation provide for the prosecution and imprisonment of any person who criticizes the State security forces for actions taken in defence of the country and the Algerian population.

3.5 Accordingly, the author asks the Committee to request Algeria to refrain from taking any criminal or other measures to punish or intimidate him, or any other member of his family, in relation for the present communication.[12]

3.6 Considering that all domestic remedies have proved ineffective and useless and that the victim's family is now legally deprived of their right of appeal, the victim's son, author of the complaint, is no longer obliged, for this communication to be deemed admissible by the Committee, to pursue any further domestic actions and procedures, or to run the risk of being exposed to criminal proceedings. The author therefore requests that the Committee find the present complaint admissible.

[12] See paragraph 1.3 above.

3.7 The author requests the Committee to urge the State party to: provide him with an effective remedy, in particular by conducting a thorough investigation into the summary execution of Mohammed Belamrania; inform the family of the results of the investigation and provide appropriate compensation for the violations suffered by the victim, the author and the family; bring criminal proceedings against the alleged perpetrators of Mohammed Belamrania's summary execution, try them and punish them, if necessary, without invoking the Order on the implementation of the Charter for Peace and National Reconciliation in order to renege on its obligations; and keep the Committee apprised of the measures taken in response to its Views and take the necessary measures to ensure that similar violations do not reoccur in future.

State party's failure to cooperate

4. On 29 August 2012, 25 November 2013, 17 June 2014 and 20 November 2014, the State party was requested to submit its observations on the admissibility and merits of the communication. The Committee notes that this information has not been received. It regrets the State party's refusal to provide any information on the admissibility and/or merits of the author's claims. It recalls that in accordance with article 4 (2) of the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and indicating the measures, if any, that have been taken by the State to remedy the situation.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether it is admissible under the Optional Protocol to the Covenant.

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

5.3 Regarding the exhaustion of domestic remedies, the Committee recalls that the State party has a duty not only to carry out thorough investigations of alleged violations of human rights brought to the attention of its authorities, particularly violations of the right to life, but also to prosecute, try and punish anyone held to be responsible for such violations.[13] Although Mohammed Belamrania's family has brought his summary execution to the attention of the competent authorities on many occasions, the State party has not undertaken any thorough and rigorous investigation into the serious allegation of the extrajudicial execution of the author's father. Moreover, the State party has failed to demonstrate that an effective remedy is available given that Order No. 06-01 of 27 February 2006 is still applied despite the Committee's recommendations that it should be brought into line with the Covenant.[14] The Committee is also concerned that, in spite of three reminders having been addressed to the State party, no information or observations on the admissibility or merits of the communication have been received. In the circumstances, the Committee finds that it is not precluded from considering the communication under article 5 (2) (b) of the Optional Protocol.

5.4 The Committee considers that the author's allegations have been sufficiently substantiated for the purposes of admissibility and proceeds with its consideration on the merits in respect of the claims made on behalf of Mohammed Belamrania under articles 2 (3), 6 (1) and 7 of the Covenant.

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

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

Consideration of the merits

6.1 The Committee has considered the present communication in the light of all the information made available to it, as required under article 5 (1) of the Optional Protocol. It notes that the State party has not replied to the author's allegations, to which, in the circumstances, due weight must be given insofar as they have been sufficiently substantiated.

6.2 The Committee notes the author's statement to the effect that, on the night of 13 to 14 July 1995, around 9.30 p.m., some 30 armed and uniformed paratroopers of the Fifth Airborne Battalion of the Algerian People's National Army, raided Mohammed Belamrania's house and proceeded to arrest him; that the following afternoon the victim was taken by military convoy to an unknown destination; that a few days later, several individuals who had been arrested at the same time as Mohammed Belamrania were released and informed his family that he was being detained at the military barracks of El Milia; that despite the steps taken by the family to ascertain the victim's fate, the authorities took no action; that on 24 July 1995, that is, 11 days after the victim's arrest, his brother, Youssef Belamrania, was informed that several persons had been executed in Tenfdour by paratroopers of the Fifth Airborne Battalion stationed at the El Milia barracks and that one of the victims might be Mohammed Belamrania; and that Youssef Belamrania then went to the location and recognized the mutilated, bullet-ridden body of his brother Mohammed Belamrania, whose hands were bound with metal wire and who showed unmistakable signs of torture and had been abandoned by the side of the national highway.

6.3 The Committee also notes the author's allegation that the authorities demanded that the family pay 120,000 dinars and provide a written admission that Mohammed Belamrania belonged to a terrorist group, in exchange for the return of his body, which was in a coffin sealed by police with a ban on opening it, and a burial permit issued by the public prosecutor of El Milia without an autopsy or investigation having been conducted, despite the fact that, according to the author, witnesses had seen the soldiers line up many persons by the side of the road in Tenfdour and summarily execute them with automatic weapons, and despite the family's many attempts to have the central police station and the court of El Milia open an investigation into Mohammed Belamrania's death. The Committee further notes that, even though it was obviously not a case of enforced disappearance but rather one of an extrajudicial execution by military personnel, the family was issued with a missing person report by the Gendarmerie unit in El Kennar.

6.4 The Committee further takes note of the author's and his family's fear of being subjected to reprisals by the authorities for having sought to verify the circumstances of Mohammed Belamrania's death, pursuant to articles 45 and 46 of Order No. 06-01 on the implementation of the Charter for Peace and National Reconciliation, which criminalize all complaints about the Algerian defence and security forces. Referring to its jurisprudence,[15] the Committee recalls that the State party cannot apply the provisions of the Charter for Peace and National Reconciliation to persons who invoke the provisions of the Covenant or who have submitted or may submit communications to the Committee. The Covenant requires the State party to show concern for the fate of every person and to treat everyone in a manner that respects the inherent dignity of the human person. Given that the amendments recommended by the Committee have not been introduced, Order No. 06-01 contributes, in the present case, to impunity and cannot be considered compatible with the provisions of the Covenant.

6.5 The Committee further recalls that, according to its jurisprudence, the burden of proof cannot rest solely with the authors of a communication, especially when the authors and the State party do not have equal access to the evidence and when the State party is often in sole possession of the relevant information, such as information related to the arrest

[15] See inter alia communications No. 1779/2008, *Mezine v. Algeria*, Views adopted on 25 October 2012, para. 8.2; No. 1781/2008, *Djebrouni v. Algeria*, Views adopted on 31 October 2011, para. 8.2; and *Boudjemai v. Algeria*, para. 8.2.

and execution of Mohammed Belamrania.[16] In the absence of any rebuttal by the State party, the Committee will attach due weight to the author's allegations and finds that the State party denied Mohammed Belamrania the right to life in particularly serious circumstances, in view of the fact that he was clearly the victim of a summary execution by members of the State party's regular army, in violation of article 6 (1) of the Covenant.

6.6 The Committee notes the author's additional allegations to the effect that Mohammed Belamrania was subjected to severe ill-treatment prior to his execution, the signs of which were apparent after his death, and that he was undoubtedly in acute psychological distress and emotional anguish prior to his execution. The State party has not adduced any information to contradict these allegations. The Committee finds a violation of article 7 of the Covenant with regard to Mohammed Belamrania.

6.7 The author also invokes article 2 (3) of the Covenant, whereby all States parties have the obligation to ensure that any person whose rights under the Covenant are violated has an effective remedy. The Committee attaches importance to the establishment by States parties of appropriate judicial and administrative mechanisms to consider complaints of rights violations. It recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, which stipulates 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.

6.8 In the present case, the victim's family requested the public prosecutor's office of El Milia to open an investigation a few days after the victim's burial in order to clarify the circumstances of his death. Instead of an immediate inquiry, and despite the fact that quite obviously this was a case not of enforced disappearance but of an extrajudicial execution carried out by members of the Algerian army, a missing person's report was issued to the family by the National Gendarmerie stating that the victim had disappeared. After the authorities had issued this report, Hamama Laouar, the victim's widow, appealed to the Director of Legal Affairs of the Ministry of Defence on 3 July 2007 to have it acknowledged that Mohammed Belamrania had been the victim of extrajudicial execution by soldiers and not of enforced disappearance, and to request that an investigation be opened into the crime perpetrated against her husband. The Committee notes, however, that no investigation has been carried out by the competent judicial authorities, despite the fact that they could not be unaware of the events, and that those responsible have not been prosecuted even though the alleged suspects were part of regular forces stationed in the region (Fifth Airborne Battalion of the Algerian People's National Army) and thus easily identifiable. The Committee concludes that the facts before it reveal a violation of article 2 (3) read in conjunction with articles 6 (1) and 7 of the Covenant with regard to Mohammed Belamrania.

7. The Committee, acting under article 5 (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 2 (3), read in conjunction with articles 6 (1) and 7 of the Covenant, with regard to Mohammed Belamrania.

8. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This provision requires that States parties provide full compensation to persons whose Covenant rights have been violated. In the present case, the State party is required to: (a) conduct a thorough and rigorous investigation into the alleged summary execution of Mohammed Belamrania; (b) provide his family with detailed information on the results of the investigation; (c) prosecute, try and punish those responsible for the violations; (d) provide the victim's family with appropriate compensation and redress. Order No. 06-01 notwithstanding, the State party should also ensure that it does not prevent the victims of offences such as torture, extrajudicial killing and enforced disappearance from exercising their right to an effective

[16] See, for example, communications No. 888/1999, *Telitsin v. Russian Federation*, Views adopted on 29 March 2004, paras. 7.5 and 7.6; and No. 1832/2008, *Al Khazmi v. Libya*, Views adopted on 18 July 2013, para. 8.2.

remedy. In addition, the State party is required to take steps to prevent similar violations from reoccurring in future.

9. 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 circulated in the official languages.

Annex

[Original: Spanish]

Separate opinion of Committee member Fabián Salvioli (partly dissenting)

1. I agree with the Committee's conclusions in the present communication, in which it found violations by the State party of articles 6 (1), 7 and 2 (3) read in conjunction with articles 6 (1) and 7 of the Covenant with regard to Mohammed Belamrania.

2. However, I must disagree with the approach adopted by the Committee, which dealt with the communication as though it concerned a case of torture and extrajudicial execution, without taking into account that the facts (which the Committee has deemed valid[a]) disclose different circumstances that the Committee did not examine.

3. Mohammed Belamrania was arrested at his home on 13 July 1995 by 30 members of the People's National Army of Algeria, who took him to a military barracks, where he was subjected to torture. The following day, he was taken to an unknown location, where he remained disappeared for several days, much to the anguish of his relatives. Lastly, on 24 July 1995, the victim's brother identified his body. The appearance of the victim's body brought an end to his enforced disappearance but did not change the fact that he had been effectively disappeared up to that point (11 days after his arrest).

4. Mohammed Belamrania was, in my view, forcibly disappeared, with all the legal effects that this entails. I fail to understand how, in this case, the Committee did not find a violation of article 9, for the arbitrary detention of the victim, and of article 16, for being placed outside the protection of the law, which should have led the Committee to find a violation of the right to recognition as a person before the law.

5. I also find it regrettable that the Committee did not take into consideration the family's suffering, the deep anguish caused by days of not knowing Mohammed Belamrania's whereabouts, the fact that they were required to pay 120,000 Algerian dinars in return for the body and, as a form of blackmail, to submit a written acknowledgement that the victim was part of a terrorist group and the fact that the mortal remains were finally handed over in a sealed coffin, the opening of which was forbidden.

6. A widow and 10 children who were underage at the time the acts were committed should also have been recognized by the Committee as victims of a violation of article 7 of the Covenant, which prohibits cruel, inhuman or degrading treatment, while the Committee should have reached the same conclusion with regard to Mohammed's brother, Youssef Belamrania, who undertook a large number of procedures, including the identification of the dead body at the side of a road, with the hands tied behind the back and exhibiting clear signs of torture.

[a] In paragraph 6.1 of its Views.