



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 2117/2011

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

<i>Submitted by:</i>	Halima Louddi (represented by Philippe Grant of the Swiss organization Track Impunity Always (TRIAL))
<i>Alleged victims:</i>	Hacen Louddi (the author's son) and the author herself
<i>State party:</i>	Algeria
<i>Date of communication:</i>	19 September 2011 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 19 September 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	30 October 2014
<i>Subject matter:</i>	Enforced disappearance
<i>Substantive issues:</i>	Right to an effective remedy, right to life, prohibition of torture and cruel or inhuman treatment, right to liberty and security of person, respect for the inherent dignity of the human person, recognition as a person before the law and protection of family life
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	Articles 2 (para. 3), 6 (para. 1), 7, 9, 10 (para. 1), 16 and 23 (para. 1)
<i>Article of the Optional Protocol:</i>	Article 5 (para. 2 (b))



## Annex

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

concerning

#### **Communication No. 2117/2011\***

<i>Submitted by:</i>	Halima Louddi (represented by Philippe Grant of the Swiss organization Track Impunity Always (TRIAL))
<i>Alleged victims:</i>	Hacen Louddi (the author's son) and the author herself
<i>State party:</i>	Algeria
<i>Date of communication:</i>	19 September 2011 (initial submission)

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

*Meeting* on 30 October 2014,

Having concluded its consideration of communication No. 2117/2011, submitted by Halima Louddi 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, which is dated 19 September 2011, is Halima Louddi, born on 16 January 1934 in Bordj el Kifane, Algeria. She claims that her son, Hacen Louddi, born on 1 September 1960, was the victim of enforced disappearance attributable to the State party, in violation of articles 2 (para. 3), 6 (para. 1), 7, 9, 10 (para. 1), 16 and 23 (para. 1) of the Covenant. The author also claims that she herself and her family are the victims of violations of articles 2 (para. 3), 7 and 23 (para. 1) of the Covenant. She is represented by Philippe Grant of the organization TRIAL.

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

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

1.2 On 19 September 2011, the Committee, through its Special Rapporteur on new communications and interim measures, decided to grant the protection measures requested by the author and asked the State party to refrain from invoking domestic legislation, and specifically Ordinance No. 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation, against the author or members of her family on the grounds of the present communication.

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

2.1 The author's son, Hacem Louddi, who worked as an educator, was questioned by the police for the first time sometime around 20 March 1995. On that occasion, he was taken to the police station in El Harrach for questioning, and then released without being charged. Shortly thereafter, on 9 April 1995, at 2.15 p.m., plain-clothed police officers arrived at Hacem Louddi's workplace, the Boumati El-Harrach secondary school, in two unmarked cars. They asked the principal of the school to summon Hacem Louddi to his office, then checked his identity papers and led him towards their cars, outside the school premises. The next day, the principal sent a letter to the head of the Algiers school district informing him that Hacem Louddi had been arrested.

2.2 According to a number of witnesses, the two cars used during Hacem Louddi's arrest belonged to the police, specifically to the Châteauneuf Operational Command Headquarters (PCO). Several persons detained at the Châteauneuf PCO subsequently confirmed that Hacem Louddi had been held there for about seven months before he disappeared.<sup>1</sup> He was seen there for the last time on the night of 18 November 1995 by one of his fellow detainees, who saw him being taken from his cell.

2.3 Since Hacem Louddi's arrest on 9 April 1995 and his subsequent disappearance, his family has never stopped taking action to try to find him. In 1995, the author and her family filed a complaint with the chief prosecutor at Bir-Mourad-Raïs. On 28 October 1995, the author sent a complaint to the chief prosecutor at the Court of Tizi-Ouzou. No investigations have been carried out as a result of these complaints. On 4 February 1996, Hacem Louddi's father declared his son's disappearance to Algerian non-governmental organizations, resulting in the publication of the latter's profile on the website Algeria-Watch. On 28 March 1996, the author wrote to the Minister of Justice. She has never received a reply.

2.4 On 19 October 1998, the family notified the United Nations Working Group on Enforced or Involuntary Disappearances of Hacem Louddi's case. Despite the Working Group's efforts, the State party has provided no clarification about the victim's fate.<sup>2</sup>

2.5 The victim's spouse, Lamia Louddi, has also made efforts to find her husband: on 29 October 1998, she petitioned the chief prosecutor at the Algiers Court of Justice to institute proceedings against a person or persons unknown for the crime of abduction. On 12 April 1999, an investigation was launched at the request of the State prosecutor. The latter interviewed many witnesses who testified to having been detained in the same cell as Hacem Louddi at the Châteauneuf PCO. One of these witnesses, who was released on 3 June 1995, said that the victim was still at the Châteauneuf PCO on the date when he left. Another witness reports having seen Hacem Louddi there until he himself was released on 15 November 1995. In a written statement, a third victim said he had seen Hacem Louddi alive during that period and that he had shared his cell at the Châteauneuf PCO for a month,

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<sup>1</sup> During this period, Hacem Louddi was being held, deprived of all contact with the outside world, in the Châteauneuf PCO, a place of secret detention, torture and summary execution. Furthermore, his detention has apparently not been recorded in a public register, and no steps have been taken to inform his family of his whereabouts.

<sup>2</sup> On 19 October 1998, Hacem Louddi's case was registered by the Working Group as number 0004215.

from 17 October to 18 November 1995, the date on which Hacen Louddi was taken from his cell and never seen again.

2.6 Despite such testimony, on 27 October 1999 the investigating judge issued an order for dismissal of proceedings on the grounds that the parties responsible for Hacen Louddi's disappearance were unknown. On 14 December 1999, following an appeal lodged by Hacen Louddi's spouse, a ruling was handed down by the indictments chamber of the Algiers Court of Appeals. The ruling invalidated the order for dismissal of proceedings and returned the case to the investigating judge for supplementary investigation, with instructions to check the records at the Châteauneuf PCO to find out who was working there at the time of the events and to bring them face to face with the witnesses. On 27 June 2004, a request for judicial assistance was addressed to the director of security services in the *wilaya* of Algiers in order to establish the identity of the employees at the time of the events, but this request remained unanswered. On 25 December 2004, the prosecution issued a second order for dismissal of proceedings on the grounds that Hacen Louddi's name was not in the lists of persons detained in 1995 that were kept by the crime control bureau of the national security forces. On 29 December 2004, Hacen Louddi's spouse appealed this order. On 1 February 2005, the indictments chamber of the Algiers Court of Appeal, considering that "the investigating judge has not fulfilled all necessary tasks in respect of the closure of the case", invalidated the order for dismissal of proceedings and again sent the case back to the same investigating judge.

2.7 Meanwhile, in order to take advantage of the compensation payable to the families of victims of the "national tragedy", Hacen Louddi's spouse requested official certification of her husband's disappearance, which was provided by the Directorate-General of National Security on 8 May 2006. Another certificate of disappearance was issued by the national gendarmerie on 18 October 2006 following a request by the disappeared person's father.

2.8 On 27 March 2007, a third order for dismissal of proceedings was issued by the investigating judge based on the fact, among others, that after the issuance of official certification of the victim's disappearance, his spouse was able to receive compensation without needing to engage in judicial proceedings. On 29 April 2007, the indictments chamber of the Algiers Court of Appeal upheld this order. The spouse of the disappeared person entered a notice of appeal before the Algerian Supreme Court. This was rejected on 29 September 2009 on the grounds that the order for dismissal of proceedings had been correctly reasoned, in that it concluded that the investigations had been fruitless because it had not been possible to identify those responsible for Hacen Louddi's disappearance.

2.9 In parallel with these judicial proceedings, on 21 October 2007, the family affairs office of the Court of Algiers officially acknowledged that Hacen Louddi had been missing since 9 April 1995. On 4 March 2008, a receipt for a compensation request was made out to the disappeared person's spouse.

2.10 In addition, the author has written many times to the National Human Rights Observatory and the National Advisory Commission for the Promotion and Protection of Human Rights, but these letters have remained unanswered.

### **The complaint**

3.1 The author alleges that her son was the victim of enforced disappearance attributable to the State party as defined by article 7, paragraph 2 (i), of the Rome Statute of the International Criminal Court and article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance. He disappeared on 9 April 1995 after being arrested by police officers acting in an official capacity and after being detained in the Châteauneuf PCO, an institution under the authority of the State party.

3.2 The author, who still does not know whether her son died in detention or is still alive, emphasizes that the State party was required to take steps to ensure Hacen Louddi's right to life, since he was under its responsibility. The fact that the State party is unable to provide accurate and consistent information on what happened to a person who was under its authority indicates that it did not take the necessary steps to protect him during his detention, in violation of article 6 (para. 1) of the Covenant. The author further maintains that when enforced disappearance lasts over an extended period, as in the case of Hacen Louddi, who has now been missing for nearly 20 years, it in itself constitutes a violation of the right to life guaranteed by article 6 (para. 1) of the Covenant.<sup>3</sup>

3.3 The author, referring to the Committee's jurisprudence,<sup>4</sup> maintains that enforced disappearance in itself constitutes a violation of article 7 of the Covenant, because her son's abduction and disappearance, which prevented him from communicating with his family and the outside world, constitute cruel, inhuman and degrading treatment. The author emphasizes that enforced disappearance is a complex crime comprising a wide range of human rights violations and cannot be reduced to incommunicado detention alone. She considers that incommunicado detention is a separate violation of article 7 of the Covenant and that the Committee must not address that aspect alone.<sup>5</sup>

3.4 Continuing to refer to the Committee's jurisprudence,<sup>6</sup> the author says that she herself and her family are the victims of a violation of article 7 of the Covenant as a result of the uncertainty surrounding the circumstances in which Hacen Louddi disappeared and his fate, which is a source of profound and continual anguish and suffering.

3.5 The author also asserts that the arrest and incommunicado detention of her son, which has still not been acknowledged by the State party, constitute arbitrary arrest and detention in breach of article 9 (paras. 1–5) of the Covenant. The disappeared person was arrested without a warrant, and he was never notified of the reasons for his arrest or of the charges against him. He was never brought before a judicial authority and was not allowed to challenge the lawfulness of his detention. In addition, no compensation for his arbitrary arrest and detention was paid to the members of his family.

3.6 According to the author, her son was likewise the victim, during his detention, of a violation of his right to be treated with humanity and with respect for the inherent dignity of the human person, in breach of article 10 (para. 1) of the Covenant. In this regard, the author recalls the Committee's jurisprudence to the effect that enforced disappearance constitutes a violation of article 10 of the Covenant.<sup>7</sup>

3.7 The author considers that, because of his incommunicado detention, her son was not able to enjoy his fundamental rights, in breach of his right to recognition as a person before the law, guaranteed under article 16 of the Covenant. The author refers to the Committee's jurisprudence, according to which intentionally removing a person from the protection of

<sup>3</sup> The author refers to the individual opinions of Fabián Omar Salvioli in this regard, in particular in communications No. 1780/2008, *Zarzi v. Algeria*, Views adopted on 22 March 2011, and No. 1588/2007, *Benaziza v. Algeria*, Views adopted on 26 July 2010.

<sup>4</sup> See communications No. 449/1991, *Mojica v. the Dominican Republic*, Views adopted on 15 July 1994, para. 5.7; No. 540/1993, *Laureano Atachahua v. Peru*, Views adopted on 25 March 1996, para. 8.5; and No. 542/1993, *N'Goya v. Zaire*, Views adopted on 25 March 1996, para. 5.5.

<sup>5</sup> See *Benaziza v. Algeria*, para. 9.5; communications No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 9.6; No. 1327/2004, *Atamna v. Algeria*, Views adopted on 10 July 2007, para. 7.6; No. 992/2001, *Bousroual v. Algeria*, Views adopted on 30 March 2006, para. 9.8; and No. 950/2000, *Sarma v. Sri Lanka*, Views adopted on 16 July 2003, para. 9.3.

<sup>6</sup> See *Benaziza v. Algeria*, para. 9.6; *Boucherf v. Algeria*, para. 9.7; *Atamna v. Algeria*, para. 7.7; *Bousroual v. Algeria*, para. 9.8; and *Sarma v. Sri Lanka*, para. 9.5.

<sup>7</sup> See communication No. 1469/2006, *Sharma v. Nepal*, Views adopted on 28 October 2008, para. 7.7.

the law for a prolonged period of time may constitute a denial of his or her right to recognition 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 legal remedies, have been systematically impeded. In such situations, disappeared persons are in practice deprived of their capacity to exercise their rights and/or to have recourse to any remedy as a direct consequence of the actions of the State, which must be interpreted as a refusal to recognize such victims as persons before the law.<sup>8</sup>

3.8 The author alleges that Hacen Louddi's enforced disappearance has fundamentally destabilized her and the rest of her family. Their family life has been destroyed: she has been deprived of her son, and Hacen Louddi's wife and children have lost a husband and father, in breach of article 23 (para. 1) of the Covenant, the State party having failed in its duty to protect their right to family life.

3.9 Lastly, the author emphasizes that her son was prevented from exercising his right to a remedy against detention and against the alleged violations of articles 7, 9, 10 (para. 1), 16 and 23 of the Covenant, in violation of article 2 (para. 3) of the Covenant. The author also contends that as long as the truth about his fate has not been established, the State party has the obligation, under article 2 (para. 3) of the Covenant, read in conjunction with article 6 (para. 1), to conduct a thorough investigation into the enforced disappearance, to inform the disappeared person's family of progress and results in the investigation and to prosecute those responsible for the disappearance. The author notes that the State party has not taken a few simple steps that would have been useful as part of an investigation into Hacen Louddi's enforced disappearance, such as to identify the persons on guard at the Châteauneuf PCO on the day of his arrest and to confront them with various witnesses in order to clarify his fate. The author considers that the investigation was not effective and that the adoption and retention of Ordinance No. 06-01 perpetuates the impunity of those responsible for enforced disappearances, undermines the right to an effective remedy and is incompatible with the provisions of the Covenant concerning the right to an effective remedy.

3.10 The author asserts that domestic remedies have been exhausted, because Hacen Louddi's disappearance was addressed in a decision by the Supreme Court dated 29 September 2009 in which it rejected the appeal by his spouse challenging the efficacy of the investigation led by the State prosecutor, and because on 27 March 2007, the investigating judge dismissed the proceedings, a decision confirmed by the indictments chamber of the Algiers Court of Appeal on 29 April 2007.

3.11 The author asks the Committee to order the State party: (a) to release Hacen Louddi if he is still alive; (b) to conduct a prompt, thorough and effective investigation into his disappearance; (c) to report to the author and her family on the results of the investigation; (d) to prosecute, try and punish the persons responsible for Hacen Louddi's disappearance, in conformity with the State party's international commitments; and (e) to provide appropriate reparation to Hacen Louddi's beneficiaries for the grave moral and material harm which they have suffered since his disappearance.

#### **State party's observations on admissibility**

4.1 On 11 April 2013, the State party submitted a note verbale in which it merely referred to the Algerian Government's background memorandum on the inadmissibility of individual communications submitted to the Human Rights Committee in connection with the implementation of the Charter for Peace and National Reconciliation and to its

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<sup>8</sup> The author cites communication No. 1328/2004, *Cheraitia v. Algeria*, Views adopted on 10 July 2007; and *Atamna v. Algeria*.

additional memorandum on the inadmissibility of communications. Those documents had been transmitted to the Committee in the context of a number of earlier communications, and the State party has not submitted copies of the said memorandums or specific comments on the present communication.

4.2 The content of these documents has been transcribed in several Views adopted by the Committee.<sup>9</sup> The State party asked the Committee to note the similarity of the facts and situations described by the authors and to take account of the sociopolitical and security context in which they occur, to conclude that the authors have not exhausted all internal remedies, to recognize that the authorities of the State party have established a comprehensive domestic mechanism for processing and settling the cases referred to in these communications through measures aimed at achieving peace and national reconciliation that are consistent with the principles of the Charter of the United Nations and subsequent covenants and conventions, to find the communication inadmissible and to request that the authors seek an alternative remedy.

#### **Authors' comments on the State party's observations**

5.1 On 8 August 2013, the author submitted comments on the State party's observations. She points 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. That is for the Committee to decide when it considers the communication. The author considers that the adoption by the State party of a comprehensive domestic settlement mechanism cannot constitute grounds for declaring the communication inadmissible. In the present case, the legislative measures adopted to implement the Charter for Peace and National Reconciliation are in themselves a violation of the rights enshrined in the Covenant, as the Committee has previously observed.<sup>10</sup>

5.2 The author recalls that the State party's declaration of a 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.

5.3 The author reiterates that following her son's arrest, the authorities in the State party were duly informed of his disappearance, but that the investigation that was conducted was not effective, since those responsible were not identified and the proceedings were terminated by an order for dismissal.

5.4 The author also recalls the ban, pursuant to article 45 of Ordinance No. 06-01, on bringing individual or collective proceedings against members of Algeria's defence and security forces. She concludes that Ordinance No. 06-01 has put an end to any possibility of bringing civil or criminal proceedings for crimes committed by the security forces during the civil war, and that the Algerian courts are obliged to declare any such claim inadmissible.

<sup>9</sup> See, for example, communication No. 1931/2010, *Bouzeriba v. Algeria*, Views adopted on 23 July 2014, paras. 4.1 to 5.4.

<sup>10</sup> The author refers to the concluding observations of the Human Rights Committee on the third periodic report of Algeria, adopted on 1 November 2007 (CCPR/C/DZA/CO/3), paras. 7, 8 and 13. She also refers to *Boucherf v. Algeria*, para. 11, and to the concluding observations of the Committee against Torture on the third periodic report of Algeria (CAT/C/DZA/CO/3), adopted on 13 May 2008, paras. 11, 13 and 17. Lastly, the author cites general comment No. 29 (2001) of the Human Rights Committee on derogations from the Covenant during a state of emergency, para. 1.

5.5 Lastly, the author notes that the State party has simply referred to its background memorandum and the additional memorandum, and has not refuted the allegations of violations. She therefore considers that the Committee must base its decision on the existing information and that her allegations must be regarded as proven.<sup>11</sup>

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

#### *Consideration of admissibility*

6.1 The Committee recalls that before considering any claim contained in a communication, it must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

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. The Committee notes that the case of Hacen Louddi has been submitted to the Working Group on Enforced or Involuntary Disappearances. However, it recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights Council to examine and report publicly on human rights situations in specific countries or territories or on cases of widespread human rights violations worldwide do not generally constitute an international procedure of investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.<sup>12</sup> Accordingly, the Committee considers that the examination of Hacen Louddi's case by the Working Group on Enforced or Involuntary Disappearances does not render the present communication inadmissible under this provision.

6.3 The Committee notes that, by way of disputing the admissibility of the communication, the State party has simply referred to its background memorandum and its additional memorandum, without providing copies of them. The Committee recalls 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, that are brought to the attention of its authorities, but also to prosecute, try and punish anyone held to be responsible for such violations.<sup>13</sup> Although the family of Hacen Louddi repeatedly contacted the competent authorities concerning his disappearance, the State party failed to conduct a thorough and effective investigation in order to identify those responsible for the disappearance, since an order for dismissal of proceedings was issued by the investigating judge on 27 March 2007 and confirmed by the Supreme Court on 29 September 2009. The State party has also failed to provide sufficient information indicating that an effective remedy is available, while Ordinance No. 06-01 continues to be applied despite the Committee's recommendation that it should be brought into line with the Covenant.<sup>14</sup> The Committee therefore concludes that article 5, paragraph 2 (b), of the Optional Protocol is not an obstacle to the admissibility of the communication.

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<sup>11</sup> The author refers to communication No. 207/2002 of the Committee against Torture, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 24 November 2004, para. 5.3; and communication No. 1640/2007 of the Human Rights Committee, *El Abani v. Libyan Arab Jamahiriya*, Views adopted on 26 July 2010, para. 4.

<sup>12</sup> See communication No. 1874/2009, *Mihoubi v. Algeria*, Views adopted on 18 October 2013, para. 6.2.

<sup>13</sup> See, inter alia, communications No. 1779/2008, *Mezine v. Algeria*, Views adopted on 25 October 2012, para. 7.4; No. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 7.4; No. 1905/2009, *Khirani v. Algeria*, Views adopted on 26 March 2012, para. 6.4; and No. 1791/2008, *Boudjemai v. Algeria*, Views adopted on 22 March 2013, para. 7.4.

<sup>14</sup> CCPR/C/DZA/CO/3, paras. 7, 8 and 13.

6.4 The Committee considers that the author has sufficiently substantiated her allegations insofar as they raise issues under articles 6 (para. 1), 7, 9, 10 (para. 1), 16, and 23, read alone and in conjunction with article 2 (para. 3) of the Covenant. The Committee notes, however, that she has not filed any application for compensation with the authorities of the State party for the arbitrary or unlawful detention of her son and that the alleged violation of article 9 (para. 5) is therefore not admissible. The Committee consequently proceeds to consider the communication on the merits with respect to the alleged violations of articles 2 (para. 3), 6 (para. 1), 7, 9, 10 (para. 1), 16, and 23.

*Consideration of the merits*

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

7.2 The State party has submitted no observations: it simply refers to its background memorandum and the additional memorandum it provided as observations on the admissibility of a number of individual communications submitted against the State party for cases of enforced disappearance during the “national tragedy”. The Committee recalls its jurisprudence,<sup>15</sup> 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. The Covenant demands that the State party concern itself with the fate of every individual and treat every individual with respect for the inherent dignity of the human person. Ordinance No. 06-01, without the amendments recommended by the Committee, promotes impunity in the present instance and therefore cannot, as it currently stands, be considered compatible with the provisions of the Covenant.

7.3 The Committee notes that the State party has not replied to the author’s allegations concerning the merits of the case and recalls its jurisprudence,<sup>16</sup> according to which the burden of proof should not lie solely with the author of a communication, especially given that the author and the State party do not always have the same degree of access to evidence and that often only the State party is in possession of the necessary information. In conformity with article 4 (para. 2) of the Optional Protocol, 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.<sup>17</sup> In the absence of any explanations from the State party in this respect, due weight must be given to the author’s allegations, provided they have been sufficiently substantiated.

7.4 The Committee notes the author’s assertion that her son, Hacem Louddi, was arrested at his workplace, in front of witnesses, by police officers from the Châteauneuf PCO on the morning of 9 April 1995 and has been missing since that date. The Committee notes that according to statements by witnesses, Hacem Louddi had been held incommunicado for several months at the Châteauneuf PCO before he finally disappeared on 18 November 1995. The Committee notes that the State party has produced no evidence to shed light on what happened to him while he was under the responsibility of the State. The Committee recalls that, in cases of enforced disappearance, the deprivation of liberty, followed by a

<sup>15</sup> See, inter alia, *Mezine v. Algeria*, para. 8.2; *Berzig v. Algeria*, para. 8.2; and *Boudjemai v. Algeria*, para. 8.2.

<sup>16</sup> See, inter alia, *Mezine v. Algeria*, para. 8.3; *El Abani v. Libyan Arab Jamahiriya*, para. 7.4; *Berzig v. Algeria*, para. 8.3; and *Boudjemai v. Algeria* para. 8.3. See also International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, judgment of 30 November 2010, para. 54.

<sup>17</sup> See *Mezine v. Algeria*, para. 8.3; communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.3; and *Boudjemai v. Algeria*, para. 8.3.

refusal to acknowledge the deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable. In the present case, the Committee notes that the State party has produced no evidence to indicate that it has fulfilled its obligation to protect the life of Hacen Louddi. It therefore concludes that the State party has failed in its duty to protect the life of Hacen Louddi, in violation of article 6 (para. 1) of the Covenant.<sup>18</sup>

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, which recommends that States parties should make provisions against incommunicado detention. It notes in the case in question that Hacen Louddi was arrested on 9 April 1995 by police officers from the Châteauneuf PCO, where he was seen for the last time by a fellow detainee on the night of 18 November 1995, and that his fate is still unknown. In the absence of a satisfactory explanation from the State party, the Committee considers that this disappearance constitutes a violation of article 7 of the Covenant with regard to Hacen Louddi.<sup>19</sup>

7.6 The Committee also takes note of the anguish and distress caused to the author and her family by the disappearance of her son and by the uncertainty as to what has become of him and the fact that no effective investigation has shed light on his fate. It considers that the facts before it disclose a violation of article 7 of the Covenant with regard to the author and her family.<sup>20</sup>

7.7 With regard to the alleged violation of article 9, the Committee notes the author's allegations that Hacen Louddi was arrested by the police, without a warrant, on 9 April 1995, that he was not charged or brought before a judicial authority, which would have enabled him to challenge the lawfulness of his detention, and that no official information regarding his fate was given to his family.<sup>21</sup> In the absence of satisfactory explanations from the State party, the Committee finds a violation of article 9.<sup>22</sup>

7.8 Regarding the complaint under article 10 (para. 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 the incommunicado detention of Hacen Louddi and in the absence of any information from the State party in that regard, the Committee finds a violation of article 10 (para. 1) of the Covenant.<sup>23</sup>

7.9 With regard to the alleged violation of article 16, the Committee reiterates its established jurisprudence, according to which the intentional removal of a person from the protection of the law for a prolonged period of time may constitute a refusal to recognize

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<sup>18</sup> See *Mezine v. Algeria*, para. 8.4; and *Boudemai v. Algeria*, para. 8.4.

<sup>19</sup> See *Mezine v. Algeria*, para. 8.5; *Khirani v. Algeria*, para. 7.5; *Berzig v. Algeria*, para. 8.5; and communication No. 1295/2004, *El Alwani v. Libyan Arab Jamahiriya*, Views adopted on 11 July 2007, para. 6.5.

<sup>20</sup> See *Mezine v. Algeria*, para. 8.6; *Khirani v. Algeria*, para. 7.6; *Berzig v. Algeria*, para. 8.6; *El Abani v. Libyan Arab Jamahiriya*, para. 7.5; and communication No. 1422/2005, *El Hassy v. Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 6.11.

<sup>21</sup> See para. 2.3 above.

<sup>22</sup> See, inter alia, *Mezine v. Algeria*, para. 8.7; *Khirani v. Algeria*, para. 7.7; and *Berzig v. Algeria*, para. 8.7.

<sup>23</sup> See general comment No. 21 (1992) on humane treatment of persons deprived of their liberty, para. 3; *Mezine v. Algeria*, para. 8.8; *Zarzi v. Algeria*, para. 7.8; and communication No. 1134/2002, *Gorji-Dinka v. Cameroon*, Views adopted on 17 March 2005, para. 5.2.

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. 3, para. 2) have been systematically impeded.<sup>24</sup> In the present case, the Committee notes that the State party has not furnished any explanation concerning the fate of Hacem Louddi, despite the multiple requests made by the author and her family to that effect. The Committee concludes that the enforced disappearance of Hacem Louddi nearly 20 years ago removed him from 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.

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

7.11 The author invokes article 2 (para. 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, according to which the failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. In the present case, although Hacem Louddi's family repeatedly contacted the competent authorities regarding the latter's disappearance, the investigation conducted by the State prosecutor led nowhere and cannot be considered an effective investigation. Furthermore, the absence of the legal right to undertake judicial proceedings since the promulgation of Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation deprives the author and her family of access to an effective remedy, because the Ordinance prohibits the initiation of legal proceedings to shed light on the most serious crimes, such as enforced disappearance.<sup>25</sup> The Committee concludes that the facts before it reveal a violation of article 2 (para. 3) of the Covenant, read in conjunction with articles 6 (para. 1), 7, 9, 10 (para. 1) and 16, with regard to Hacem Louddi, as well as of article 2 (para. 3) of the Covenant, read in conjunction with article 7, with regard to the author and her family.

8. The Human Rights Committee, acting under article 5 (para. 4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses violations by the State party of articles 6 (para. 1), 7, 9, 10 (para. 1) and 16 of the Covenant, read alone and in conjunction with article 2 (para. 3), with regard to Hacem Louddi. It also finds a violation by the State party of articles 7 of the Covenant, read alone and in conjunction with article 2 (para. 3), with regard to the author and her family.

9. In accordance with article 2 (para. 3) of the Covenant, the State party is under an obligation to provide the author and her family with an effective remedy, including by: (a) conducting a thorough and effective investigation into the disappearance of Hacem Louddi and providing the author and her family with detailed information about the results of its investigation; (b) releasing Hacem Louddi immediately if he is still being detained incommunicado; (c) in the event that Hacem Louddi is deceased, handing over his remains to his family; (d) prosecuting, trying and punishing those responsible for the violations committed; and (e) providing adequate compensation to the author and her family for the violations suffered and to Hacem Louddi, if he is still alive. Notwithstanding the terms of

<sup>24</sup> See *Mezine v. Algeria*, para. 8.9; *Khirani v. Algeria*, para. 7.9; *Berzig v. Algeria*, para. 8.9; *Zarzi v. Algeria*, para. 7.9; *Benaziza v. Algeria*, para. 9.8; *Atamna v. Algeria*, para. 7.8; and communication No. 1495/2006, *Madoui v. Algeria*, Views adopted on 28 October 2008, para. 7.7.

<sup>25</sup> CCPR/C/DZA/CO/3, para. 7.

Ordinance No. 06-01, the State party should ensure that it does not impede enjoyment of the right to an effective remedy for crimes such as torture, extrajudicial killings and enforced disappearances. The State party is also under an obligation to 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.

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