



## International Covenant on Civil and Political Rights

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### Human Rights Committee

### Communication No. 2026/2011

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

<i>Submitted by:</i>	Bariza Zaier (represented by Philippe Grant of the Swiss association TRIAL – Track Impunity Always)
<i>Alleged victims:</i>	Rachid Sassene (husband of the author) and the author herself
<i>State party:</i>	Algeria
<i>Date of communication:</i>	10 December 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 18 February 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	29 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 unlawful interference with the home
<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 17
<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. 2026/2011\***

*Submitted by:* Bariza Zaier (represented by Philippe Grant of the Swiss association TRIAL – Track Impunity Always)

*Alleged victims:* Rachid Sassene (husband of the author) and the author herself

*State party:* Algeria

*Date of communication:* 10 December 2010 (initial submission)

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

*Meeting on 29 October 2014,*

*Having concluded* its consideration of communication No. 2026/2011, submitted to the Human Rights Committee by Bariza Zaier, 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 pursuant to article 5, paragraph 4, of the Optional Protocol**

1.1 The author of the communication, dated 10 December 2010, is Ms. Bariza Zaier. She claims that her husband, Rachid Sassene, is a victim of violations by Algeria of articles 2 (para. 3), 6 (para. 1), 7, 9, 10 (para. 1), 16 and 17 of the International Covenant on Civil and Political Rights. The author considers herself a victim of the violation of articles 2 (para. 3), 7 and 17 of the Covenant. She is represented by Philippe Grant of the organization TRIAL.

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\* The following members of the Working Group participated in the examination of the present communication: Yadh Ben Achour, Christine Chanut, Ahmed Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, 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 participate in the consideration of the communication.

The text of the individual (concurring) opinion of Gerald L. Neuman is appended to the present Views.

1.2 On 18 February 2011, the Committee, through its Special Rapporteur on new communications and interim measures, decided not to grant the author's request for interim measures of protection asking the State party to refrain from taking any criminal or other measure to punish or intimidate the author or members of her family on the grounds of the present communication. On 9 May 2011, the Committee, through its Special Rapporteur on new communications and interim measures, decided not to examine the admissibility of the communication separately from the merits.

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

2.1 The author is Bariza Zaier, born on 17 July 1964, in Skikda, Algeria. She is the wife of Rachid Sassene, father of five children and a welder by occupation, who was born on 25 November 1948 in Skikda. On 18 May 1996, a group of more than 20 uniformed and plainclothes policemen burst into the Sassene family's home in Constantine. Acting in a violent manner, they arrested Rachid Sassene, who was suspected of involvement with the Front Islamique du Salut (Islamic Salvation Front) (FIS). At the time, the Sassene family was in the process of moving, and the author was at the new house. Immediately after arresting Rachid Sassene, the group of policemen made their way to the new house in order to arrest the author. She states that she was subjected to ill-treatment by the security officers, who hurled insults at her, bound her hands, blindfolded her, shaved her head and proceeded to drag her barefoot down the stairs. Some neighbours claim to have seen Rachid Sassene, who was blindfolded and kept standing outside a police car, at the site of the author's arrest. The author also maintains that the home from which they were in the process of moving was looted and ransacked during the security forces' action.

2.2 The author was held for two weeks in the same prison as her husband but in a separate cell. She maintains that she was able to speak with him during her detention and had been able to do so until 3 June 1996, at which point she was released. Since her release from prison, the author has never had any further contact with, or news of, her husband.

2.3 Following her release, the author went to the Constantine Prefecture to report to the Public Prosecutor that her husband was missing. On 27 April 1997, the author received an official report from the Criminal Investigation Department of the Constantine Prefecture notifying her that the results of its search were negative and that Mr. Sassene "had never been summoned by the Department".

2.4 On 21 December 1997, the author was convicted by the criminal division of the Constantine Court of Justice and given a suspended sentence of 6 months' imprisonment for "supporting a terrorist group". Contrary to the official report issued on 27 April 1997, the judgement stated that her husband had indeed been "arrested".

2.5 The author then contacted the National Observatory for Human Rights, from which she received a reply dated 2 March 2001 to the effect that her husband had never been sought or arrested by the security services. Given the conflicting replies of the authorities concerning her husband's arrest, the author once again contacted the Public Prosecutor in order to obtain information regarding her husband's fate. On 11 March 2001, the Criminal Investigation Department of the Constantine Prefecture issued a new official report, in which it stated for the first time that Mr. Sassene had been "eliminated by the security forces [...] on 19 May 1996", which was the day following his arrest, and in spite of the fact that the author claims to have conversed with him in the course of her detention, which lasted until 3 June 1996.

2.6 The author notes that her father-in-law had also initiated procedures with the Constantine Prefecture, which had resulted in a brief letter from the Ministry of the Interior, dated 5 February 2000, informing him that the "investigations had not succeeded in ascertaining the whereabouts" of Rachid Sassene.

2.7 Finally, the author argues that she is no longer able to seek any remedy before the national authorities of the State party for fear of being subjected to criminal prosecution by the Government. Ordinance No. 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation provides not only that any action brought against members of the defence and security forces of Algeria is to be declared inadmissible by the competent judicial authority but also that any person lodging such a complaint is liable to imprisonment and a fine.

2.8 In accordance with Ordinance No. 06-01 and for the purposes of seeking compensation, the author requested the National Gendarmerie to produce a certificate attesting to her husband's disappearance. On 17 June 2006, the Gendarmerie issued a certificate attesting to the fact that Rachid Sassene had died as a member of terrorist groups on 18 May 1996, one day prior to the date of death recorded by the Criminal Investigation Department in its official report of 11 March 2001. On 11 July 2006, the El-Ziada Division of the Constantine Court of Justice ordered the registrar to register the death of Rachid Sassene, as "considered to have died in Constantine in 1996". On 9 September 2006, a death certificate was issued pursuant to this decision. It reflects the same inaccuracy concerning the date of Rachid Sassene's death.

2.9 In 2001, through the National Association of Families of Missing Persons of Constantine, the author approached the United Nations Working Group on Enforced or Involuntary Disappearances to request that it register the disappearance of her husband.<sup>1</sup>

### **The complaint**

3.1 The author considers her husband to be the victim of an act of enforced disappearance that is attributable to the State party, as set out in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance. According to the author, Rachid Sassene is a victim of a violation of articles 2 (para. 3), 6 (para. 1), 7, 9, 10 (para. 1), 16 and 17, of the Covenant. She also considers herself and her family to be victims of a violation of articles 2 (para. 3), 7 and 17, of the Covenant.

3.2 In the present case, the author emphasizes that her husband disappeared after being arrested by the security forces on 18 May 1996 and while in the custody of the authorities of the State party. The author draws attention to the blatant contradictions in the authorities' statements concerning her husband's fate, in particular the purported date of his death. The author explains that, even though there is no physical evidence of her husband's death, there are strong grounds for believing that he died in custody while under the protection of the authorities of the State party, which were required to take necessary measures to prevent his disappearance and protect his life as a detainee under their responsibility. The State party has therefore failed to fulfil its obligation to protect Rachid Sassene's right to life, which is guaranteed under article 6, paragraph 1, of the Covenant.

3.3 Referring to the Committee's jurisprudence,<sup>2</sup> the author contends that the act of enforced disappearance in itself constitutes a violation of article 7 of the Covenant, since the fact that the victim was prevented from communicating with his family and the outside world constitutes cruel and inhuman treatment. The author stresses that enforced disappearance is a complex crime consisting of a wide range of human rights violations and cannot be reduced solely to an act of incommunicado detention, as the Committee appears

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<sup>1</sup> See Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/10/9), p. 134, which lists the author's name among the cases registered by the Working Group under No. 10002090.

<sup>2</sup> Communications No. 449/1991, *Rafael Mojica v. Dominican Republic*, Views adopted on 15 July 1994, para. 5.7; No. 540/1993, *Laureano Atachagua 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.

to do in its most recent jurisprudence.<sup>3</sup> The author points out that her husband was arrested in a violent manner by security forces without being informed of the reasons for his arrest; he had not had the benefit of consulting a lawyer; and he had been deprived of all contact with the outside world. According to the author, the incommunicado detention of her husband, together with his arrest and the subsequent conduct of the authorities, constitute a violation of article 7 of the Covenant with regard to her husband.

3.4 Referring to the Committee's jurisprudence in this regard,<sup>4</sup> the author stresses that the uncertainty surrounding both the circumstances in which her husband disappeared and what has become of him in the many years since that time is a source of deep and constant suffering, anguish and distress, and that this disappearance constitutes a violation of article 7 of the Covenant with regard to the author and the members of her family.

3.5 The author adds that the violent circumstances of her own arrest, the authorities' denial of her husband's arrest and detention, which she had witnessed at first hand, and the fact of being forced to accept that the certificate of disappearance issued by the Algerian authorities on 17 June 2006 stated that her husband belonged to a terrorist group also constitute a form of inhuman and degrading treatment with regard to the author, in violation of article 7 of the Covenant.

3.6 The author recalls that her husband's arrest on 18 May 1996 was conducted without a warrant and that it therefore constitutes an act of arbitrary detention under article 9, paragraph 1, of the Covenant. During the two weeks of her detention, the author had been able to speak with her husband, who told her that he still had not been informed of the reasons for his arrest or the charges that had been brought against him, in violation of article 9, paragraph 2, of the Covenant. The author notes that the violation continues to this day, given that no information has ever been transmitted to her family on the matter. According to the author, the incommunicado detention of Rachid Sassene also constitutes a violation of article 9, paragraphs 3 and 4, of the Covenant, since he was, in effect, precluded from communicating with a lawyer, was never brought before a judge and had no possibility of challenging the lawfulness of his detention. Finally, the author recalls that no compensation has been awarded for the arbitrary arrest and detention of Rachid Sassene, in violation of article 9, paragraph 5, of the Covenant.

3.7 Referring to the Committee's general comment No. 21 (1992) on humane treatment of persons deprived of their liberty<sup>5</sup> and to its jurisprudence,<sup>6</sup> the author notes that the enforced disappearance of her husband constitutes a violation of his right to be treated with humanity and with respect during his deprivation of liberty, as set out in article 10, paragraph 1, of the Covenant.

3.8 The author also maintains that her husband's right to recognition as a person before the law has been violated, as has been recognized by the Committee in similar

<sup>3</sup> Communications No. 1588/2007, *Benaziza v. Algeria*, Views adopted on 26 July 2010, para. 9.5; 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>4</sup> *Benaziza v. Algeria*, para. 9.6; *Boucherf v. Algeria*, para. 9.7; *Atamna v. Algeria*, para. 7.7; *Bousroual v. Algeria*, para. 9.8; *Sarma v. Sri Lanka*, para. 9.5.

<sup>5</sup> General comment No. 21, paras. 3 and 4.

<sup>6</sup> Communication No. 1469/2006, *Sharma v. Nepal*, Views adopted on 28 October 2008, para. 7.7.

circumstances,<sup>7</sup> given that he was deprived of the capacity to exercise the rights guaranteed to him by law or to have recourse to any remedy, in violation of article 16 of the Covenant.

3.9 In addition, the author argues that the conduct of a search without a warrant, followed by the looting and destruction of the family's home, is an arbitrary and unlawful interference with their privacy and home, which constitutes a violation of article 17 of the Covenant with regard to the author, her husband and the rest of the family.<sup>8</sup>

3.10 The author says that the incomplete and erroneous results of the inquiries purportedly carried out by the State party's authorities into her husband's fate show that there had been no reliable investigation. She recalls that the authorities initially denied that her husband had been arrested. Later they stated that he had been killed by security forces on 19 May 1996, whereas the author had been in contact with him as late as 3 June 1996. Finally, the authorities claimed that he had died as a member of a terrorist group on 18 May 1996, the very day of his arrest, which blatantly contradicted all first-hand accounts of his arrest and the initial statements made by the authorities. The author argues that the State party has violated its obligations to act on all complaints of serious violations of rights guaranteed under the Covenant, to carry out prompt, impartial, thorough and effective investigations, and to inform the author of the results of such investigations. The author therefore considers that she has not had recourse to an effective remedy before the authorities of the State party, in violation of article 2, paragraph 3, of the Covenant.

3.11 Lastly, the author notes that the Committee has correctly interpreted Ordinance No. 06-01 as an instrument whose aim is to promote impunity and infringe the right to an effective remedy. The adoption of this Ordinance reinforces the inefficiency and bias of the Algerian judicial system and deprives the author of all remedies available at the national level, in violation of article 2 (para. 3) of the Covenant, read alone and in conjunction with articles 6 (para. 1), 7, 9, 10 (para. 1), 16 and 17 of the Covenant.

3.12 The author asks the Committee to order the State party: (a) to release Rachid Sassene 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 Rachid Sassene's disappearance, in conformity with the State party's international commitments; and (e) to provide appropriate reparation to Rachid Sassene's beneficiaries, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition, for the grave moral and material harm which they have suffered since his disappearance.

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

4.1 On 4 May 2011, the State party contested the admissibility of the present communication, referring to the background memorandum of the Algerian Government 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, which was first sent to the Committee on 3 March 2009, and also to its additional memorandum of 30 August 2010.<sup>9</sup>

<sup>7</sup> *Atamna v. Algeria*, para. 7.8; communications No. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, Views adopted on 26 July 2010, para. 7.9; and No. 1495/2006, *Madoui v. Algeria*, Views adopted on 28 October 2008, para. 7.7.

<sup>8</sup> Communications No. 1460/2006, *Yklymova v. Turkmenistan*, Views adopted on 20 July 2009, para. 7.6; No. 915/2000, *Ruzmetov v. Uzbekistan*, Views adopted on 30 March 2006, para. 7.9; No. 687/1996, *Rojas García v. Colombia*, Views adopted on 3 April 2001, para. 10.3; and No. 778/1997, *Coronel et al. v. Colombia*, Views adopted on 24 October 2002, para. 9.7.

<sup>9</sup> See, for example, communication No. 1899/2009, *Terafi v. Algeria*, Views adopted on 21 March 2014, paras. 4.1 to 4.9.

4.2 The State party further points out that the Rachid Sassene case is still pending, being under consideration by the Working Group on Enforced or Involuntary Disappearances of the Human Rights Council. It recalls that it is one of 2,704 cases of alleged disappearance in Algeria that are being examined by the Working Group. The Working Group has compared this list and the list officially drawn up by the State party of cases of victims of the national tragedy that have been settled under the provisions of the Charter for Peace and National Reconciliation. In the lists prepared by the Government of the State party, Rachid Sassene appears as: “deceased: armed member of a terrorist group eliminated during a counter-terrorist operation”. The State party points out, however, that “in the absence of any formal application for compensation from the beneficiaries”, it had not been possible to process the present case under the Charter for Peace and National Reconciliation. The State party notes that contacts, exchanges of correspondence and formal meetings between the Government and the Working Group are still in progress.

4.3 The State party also recalls that the alleged enforced disappearance of Rachid Sassene falls into the category of allegations of violations committed in the context of the antiterrorism struggle during the period of the national tragedy, which have already been addressed by the domestic settlement mechanism provided for in the Charter for Peace and National Reconciliation.

4.4 The State party concludes that the communication is inadmissible.

#### **The author’s comments on the State party’s submission**

5.1 On 12 March 2012, the author submitted comments on the State party’s observations on the admissibility of the communication.

5.2 The author points out that, since the State party has not contested the allegations set forth in the communication, the Committee must afford due weight to the conclusions reached by the author in her communication and consider that all the allegations have been sufficiently substantiated.

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

##### *Consideration of admissibility*

6.1 The Committee points out that the Special Rapporteur’s decision not to separate the decisions on admissibility and the merits (see para. 1.2 above) does not mean that the Committee cannot consider the two matters separately. Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under any other procedure of international investigation or settlement. The Committee notes in this regard that the State party is of the view that the case of Rachid Sassene is currently being considered by the Working Group on Enforced or Involuntary Disappearances and that this communication is not admissible. However, it recalls that extra-conventional procedures or mechanisms established by 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>10</sup>

<sup>10</sup> See, inter alia, communications No. 1791/2008, *Boudjemai v. Algeria*, Views adopted on 22 March 2013, para. 7.2; No. 1779/2008, *Mezine v. Algeria*, Views adopted on 25 October 2012, para. 7.2; No.

Accordingly, the Committee considers that the examination of Rachid Sassene's case by the Working Group on Enforced or Involuntary Disappearances does not render it inadmissible under this provision.

6.3 The Committee recalls that the State party has a duty not only to carry out thorough investigations of alleged violations of human rights brought to the attention of its authorities, particularly enforced disappearances, but also to prosecute, try and punish anyone held to be responsible for such violations.<sup>11</sup> The author repeatedly informed the competent authorities of her husband's disappearance, but the State party did not conduct a thorough and effective investigation into the matter. The State party has also failed to provide sufficient evidence that an effective and available remedy has been provided, 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>12</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.

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 17, read alone and in conjunction with article 2 (para. 3) of the Covenant. The Committee notes, however, that the author has not applied to the State party authorities for compensation for the arbitrary or unlawful detention of her husband and that the claim of a violation of article 9 (para. 5) is not admissible. The Committee therefore proceeds to consider the communication on the merits in respect of the alleged violations of articles 2 (para. 3), 6 (para. 1), 7, 9, 10 (para. 1), 16 and 17.

#### *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 The State party has merely drawn attention to its collective and general comments, which it has previously transmitted to the Committee in relation to other communications, in order to confirm its position that such cases have already been settled in implementation of the Charter for Peace and National Reconciliation. The Committee refers to its jurisprudence and recalls that the State party may not invoke the provisions of the Charter for Peace and National Reconciliation against persons who invoke provisions of the Covenant or who have submitted, or may submit, communications to the Committee. The Covenant requires the State party to show concern for the fate of each individual and to treat each person with respect for the inherent dignity of the human person. In the present case, Ordinance No. 06-01 — without the amendments recommended by the Committee — promotes impunity and therefore cannot, as it currently stands, be considered compatible with 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>13</sup> according to which the

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1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 7.2; and *Laureano Atachahua v. Peru*, para. 7.1.

<sup>11</sup> See, inter alia, *Mezine v. Algeria*, para. 7.4; *Berzig v. Algeria*, para. 7.4; No. 1905/2009, *Khirani v. Algeria*, Views adopted on 26 March 2012, para. 6.4; and *Boudjemai v. Algeria*, para. 7.4.

<sup>12</sup> 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.

<sup>13</sup> See, inter alia, *Mezine v. Algeria*, para. 8.3; *El Abani v. Libyan Arab Jamahiriya*, para. 7.4; and *Berzig 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.



burden of proof should not rest solely on the author of a communication, especially given that the author and the State party do not always have the same degree of access to evidence and that often only the State party is in possession of the necessary information. In conformity with article 4, paragraph 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>14</sup> In the absence of any explanation 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 that the author and her husband were arrested by police officers on 18 May 1996. It further notes that, according to the author, they were held for two weeks in the same prison, and that she has had no news of her husband since her own release on 3 June 1996. The author adds that, in view of the number of years that have passed and the authorities' vague and contradictory assertions regarding her husband's death, it is highly probable that he died in custody. The Committee notes that the State party has not provided any evidence to clarify the conflicting information it provided to the author concerning the fate of Rachid Sassene, nor to confirm the date or the circumstances of his possible death. It recalls that, in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge that 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 Rachid Sassene. The Committee therefore finds that the State party has failed in its duty to protect Rachid Sassene's life, in violation of article 6, paragraph 1, of the Covenant.<sup>15</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 take measures to prohibit incommunicado detention. It notes that Rachid Sassene was arrested by security forces on 18 May 1996 and was subsequently detained for at least two weeks, but that no information whatsoever was provided concerning his fate thereafter. 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 Rachid Sassene.<sup>16</sup>

7.6 The Committee takes note of the anguish and distress caused to the author by her husband's disappearance and by the circumstances of her own arrest and considers that she is the victim of a violation of article 7 of the Covenant.<sup>17</sup>

7.7 With regard to the alleged violation of article 9, the Committee takes note of the author's allegations that Rachid Sassene was arrested without a warrant, was not informed of the reasons for his arrest, was not formally charged and was not brought before a judicial authority, which would have enabled him to challenge the lawfulness of his detention. In

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

<sup>15</sup> See *Mezine v. Algeria*, para. 8.4; and *Boudeмай v. Algeria*, para. 8.4.

<sup>16</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>17</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.

the absence of satisfactory explanations from the State party, the Committee finds a violation of article 9 with regard to Rachid Sassene.<sup>18</sup>

7.8 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 Rachid Sassene's incommunicado detention and in the absence of information from the State party in that regard, the Committee finds a violation of article 10, paragraph 1, of the Covenant.<sup>19</sup>

7.9 The Committee reiterates its established jurisprudence,<sup>20</sup> 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 him or her 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 (art. 2, para. 3, of the Covenant) have been systematically impeded. In the present case, the Committee notes that the State party has not furnished any explanation concerning the fate or whereabouts of Rachid Sassene despite the multiple requests addressed to the State party by the author. The Committee finds that Rachid Sassene's enforced disappearance more than 18 years ago removed him from the protection of the law and deprived him of his right to be recognized as a person before the law, in violation of article 16 of the Covenant.

7.10 The Committee notes that the State party provided no explanation or justification for the fact that policemen conducted a search without a warrant in the home of Rachid Sassene's family, nor for the fact that they looted and ransacked the family's home in the course of that unlawful search. The Committee finds that the conduct of the State officials and their entry into the Sassene home constitute unlawful interference with the family's home, in violation of article 17 of the Covenant.<sup>21</sup>

7.11 The Committee recalls the importance it attaches to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing complaints of violations of the rights guaranteed under the Covenant. 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 itself, give rise to a separate breach of the Covenant. In the present case, the family of Rachid Sassene informed the competent authorities, including the Public Prosecutor, of Mr. Sassene's disappearance, but the State party has failed to undertake a thorough and effective investigation into his disappearance, and the author has received only vague and contradictory information on the matter. Furthermore, the absence of the legal right to undertake judicial proceedings following the promulgation of Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation continues to deprive Rachid Sassene, as well as the author and her family, of any access to an effective remedy, since the Ordinance prohibits the initiation of legal proceedings to shed light on the most serious of crimes, including enforced disappearance.<sup>22</sup> The Committee finds that the facts before it reveal a violation of article 2 (para. 3), read in conjunction with articles 6 (para. 1),

<sup>18</sup> See, inter alia, *Mezine v. Algeria*, para. 8.7; *Khirani v. Algeria*, para. 7.7; and *Berzig v. Algeria*, para. 8.7.

<sup>19</sup> See general comment No. 21, para. 3; *Mezine v. Algeria*, para. 8.8; communications No. 1780/2008, *Zarzi v. Algeria*, Views adopted on 22 March 2011, para. 7.8; and No. 1134/2002, *Gorji-Dinka v. Cameroon*, Views adopted on 17 March 2005, para. 5.2.

<sup>20</sup> *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 *Madoui v. Algeria*, para. 7.7.

<sup>21</sup> *Mezine v. Algeria*, para. 8.10.

<sup>22</sup> CCPR/C/DZA/CO/3, para. 7.

7, 9, 10 (para. 1), 16 and 17, with regard to Rachid Sassene, and of article 2 (para. 3), read in conjunction with article 7, with regard to 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 a violation by the State party of articles 6 (para. 1), 7, 9, 10 (para. 1), 16 and 17 of the Covenant, as well as of article 2 (para. 3), read in conjunction with articles 6 (para. 1), 7, 9, 10 (para. 1), 16 and 17, with regard to Rachid Sassene. The Committee also finds a violation by the State party of article 7 of the Covenant, read alone and in conjunction with article 2 (para. 3), with regard to the author.

9. In accordance with article 2, paragraph 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) carrying out a thorough and effective investigation into the disappearance of Rachid Sassene and providing the author and her family with detailed information about the results of its investigation; (b) releasing Rachid Sassene immediately if he is still being held incommunicado; (c) in the event that he is deceased, returning his remains to his family; (d) prosecuting, trying and punishing those responsible for the violations that were committed; (e) providing adequate compensation to the author for the violations perpetrated against her, and to Rachid Sassene, if he is alive; and (f) providing appropriate satisfaction for the author and her family. Notwithstanding the terms of Ordinance No. 06-01, the State party should ensure that it does not impede enjoyment of the right to an effective remedy for crimes such as torture, extrajudicial killings and enforced disappearances. The State party is also under an obligation to 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.

## Appendix

[Original: English]

### Individual opinion of Gerald L. Neuman (concurring)

1. I concur fully with the Committee's Views in this case. I write separately, however, because the interplay between the author's requests for remedial measures, recounted in paragraph 3.12 of the Views, and the Committee's response in paragraph 9 of the Views, illustrates some important issues regarding the remedial practice of the Committee.

2. In addition to investigation and prosecution of the perpetrators of the grave violations found here, the author requests the Committee to *order (ordonner)* the State party to provide appropriate reparation including measures of compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. Counsel for this author has urged the Committee in other submissions to align itself with the remedial practice of the Inter-American Court of Human Rights, and thus to include in its Views express direction of measures of satisfaction that a state must provide, such as the issuance of an official apology, the building of a monument to the victim, or the naming of a street after the victim.<sup>a</sup>

3. The Human Rights Committee is not the Inter-American Court of Human Rights, and should not try to be. The Inter-American Court has powers that the Committee lacks, and the Committee has powers that the Inter-American Court lacks; the two bodies face vastly different caseloads and employ very different procedures.<sup>b</sup> The Inter-American Court regards itself as having broad remedial discretion, and it exercises that discretion quite freely in ordering highly specific measures.

4. In the remedial paragraphs of its Views on communications, the Committee normally distinguishes between individual measures of reparation to the particular victims, and general measures to avoid similar violations of the rights of other persons in the future. The Committee links the individual measures of reparation to the obligation of states under article 2, paragraph 3, of the Covenant to ensure that any person whose rights under the Covenant are violated shall have an effective remedy, and links the general measures to obligations under article 2 as a whole.<sup>c</sup> The obligation to ensure an effective remedy for the victim at the domestic level attaches to violations of the Covenant, independently of whether they become the subject of a communication under the Optional Protocol.

5. As in the present case, reparation for a past violation would often involve a set of remedial measures that, taken in combination, satisfy the standard of an effective remedy. Some of these measures may be indispensable elements without which the combined remedy would not be effective. The Committee has explained, for example, that cessation of an ongoing violation is an essential element of the right to an effective remedy.<sup>d</sup> In cases

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<sup>a</sup> Those who have followed the public meetings of the Committee on the subject of its working methods during the October 2014 session will be aware that the Committee is currently engaged in consideration of changes in its remedial practice. See UN Doc. CCPR/C/SR.3125 and UN Doc. CCPR/C/SR.3134, which attempt to capture in abbreviated form the discussion by the Committee. I have tried to examine generally factors that should inform such discussions in a recent article, *Bi-Level Remedies for Human Rights Violations*, 55 Harvard International Law Journal 325 (2014).

<sup>b</sup> See also, in this regard, the concurring opinion in communication No. 1874/2009, *Mihoubi v. Algeria*, Views adopted on 18 October 2013.

<sup>c</sup> See general comment No. 33, para. 14; general comment No. 31, para. 17.

<sup>d</sup> General comment No. 31, para. 15.

of enforced disappearance, investigation of the violation and bringing the perpetrators to justice are also necessary elements.<sup>e</sup> The inclusion of corresponding language in paragraph 9 of the present Views may be understood in light of the Committee's established position that these measures are always necessary to an effective remedy for enforced disappearance.

6. Providing all the usual indispensable elements, however, may not suffice to give an effective remedy in a particular case. A gap may remain, and there may be a variety of different remedial options that could be chosen to fill that gap. Indeed, there is a broad range of conceivable remedial actions that a state might take, in varying combinations, for the benefit of an individual victim. Choosing among these sets of options is a matter of remedial discretion that article 2, paragraph 3, leaves to the state, so long as the set of measures, taken together, meets the standard of an effective remedy.

7. Choosing judiciously among these sets of options may require additional information about local conditions, beyond the information relevant to the finding of violation. Moreover, the choices may affect the interests of third parties who have no opportunity to participate in the Committee's proceedings, because of the practice of confidentiality under the Optional Protocol.

8. The Committee has recognized in general comment No. 31 that in appropriate situations, reparation can involve measures of satisfaction, such as public apologies and memorials.<sup>f</sup> There may indeed be important value to victims in receiving an official apology at a public ceremony, or having a monument built to them, or having a street named after them. But in my opinion each of these measures falls in the category of remedial options, for consideration by the state in carrying out its obligation to compose an effective remedy. No specific choice of this kind amounts to an indispensable element that the Covenant requires the state to provide. The Committee would not be justified in saying that such an element was obligatory, and the Committee is not authorized to exercise remedial discretion and impose its choices on the state.<sup>g</sup>

9. In paragraph 9 of the Views in the present case, the Committee refers merely to appropriate measures of satisfaction, without attempting to determine the choice among them. This appears to reflect a new usage in the Committee's remedial paragraphs, and it might have been beneficial for the Committee to explain the reasons for including it.<sup>h</sup> For me, given the lapse of time and the conduct of the State party, some additional measure of satisfaction beyond the other elements listed in paragraph 9 is required for an effective remedy to the victims. The Committee neither "orders" a particular measure of satisfaction, nor expresses a soft preference among the available options. I agree with this articulation of the remedial paragraph as well with the rest of the Views.

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<sup>e</sup> General comment No. 31, para. 18.

<sup>f</sup> General comment No. 31, para. 16.

<sup>g</sup> To be clear, I am not referring to the legal effect of the Committee's conclusions that certain actions are required by the Covenant, see generally general comment No. 33, but rather to the significance of choices that are not required by the Covenant.

<sup>h</sup> The Committee's Views usually do not identify the reasoning underlying the remedial paragraph, but for a recent case where reasoning was included, see communication No. 2097/2011, *Timmer v. Netherlands*, Views adopted 24 July 2014, para. 9.