



## International Covenant on Civil and Political Rights

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### Human Rights Committee

### Communication No. 1974/2010

#### Views adopted by the Committee at its 111th session (7–25 July 2014)

<i>Submitted by:</i>	Saïd Bousseloub (represented by Rachid Mesli, Alkarama for Human Rights)
<i>Alleged victim:</i>	Nedjma Bouzaout (wife of the author) and the author himself
<i>State party:</i>	Algeria
<i>Date of communication:</i>	30 July 2010 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 14 September 2010 (not issued in document form)
<i>Date of adoption of Views:</i>	23 July 2014
<i>Subject matter:</i>	Arbitrary execution
<i>Substantive issues:</i>	Right to life, prohibition of torture and cruel or inhuman treatment, and right to an effective remedy
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	Articles 2 (para. 3), 6 (para. 1) and 7
<i>Articles of the Optional Protocol:</i>	Article 5 (para. 2 (b))

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\* Reissued for technical reasons on 13 October 2014.



## 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 (111th session)**

concerning

#### **Communication No. 1974/2010**

*Submitted by:* Saïd Bousseloub (represented by Rachid Mesli, Alkarama for Human Rights)

*Alleged victim:* Nedjma Bouzaout (wife of the author) and the author himself

*State party:* Algeria

*Date of communication:* 30 July 2010 (initial submission)

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

*Meeting* on 23 July 2014,

*Having concluded* its consideration of communication No. 1974/2010, submitted to the Human Rights Committee by Saïd Bousseloub 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 30 July 2010, is Saïd Bousseloub, born on 20 December 1944 and a resident of Oudjana, Jijel wilaya, Algeria. He claims that his wife, Nedjma Bouzaout, was a victim of a violation by the State party of article 6, paragraph 1, of the Covenant. He also claims that he is himself a victim of a violation of article 7 of the Covenant and of article 2, paragraph 3, read in conjunction with articles 6, paragraph 1, and 7 of the Covenant. He is represented by Rachid Mesli of the NGO Alkarama for Human Rights.

1.2 On 14 September 2010, the Committee, through its Special Rapporteur on New Communications and Interim Measures, decided not to grant the protection measures requested by the author asking the State party not to take any criminal action, or measure of any other kind, to punish or intimidate the author or any member of his family as a result of this communication. On 21 January 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 presented by the author**

2.1 On 25 January 1996, members of an unidentified armed group murdered three women near the village of Oudjana and wounded a fourth. The victims were the wives of members of the militia and the municipal police. The following day, 26 January 1996, at around 7 a.m., officers of the Oudjana municipal police and soldiers from the Oudjana barracks surrounded the houses of the families of two men who were in hiding in the maquis, including the home of the Bousseloub family. The police stormed the Bousseloub family home, shooting at the front of the house. Nedjma Bouzaout opened the door and one of the policemen (R.B.) shot her point-blank and she died immediately.

2.2 In the course of the police raid of 26 January 1996, and after Nedjma Bouzaout had been killed, another police officer (AS) entered the Bousseloub family home and hit and injured the author. The municipal police officers<sup>1</sup> took the author and two other residents of the village, M.B. and A.B., and handed them over to the gendarmes at Boucherka-Taher. The author states that, on the journey from his home to the gendarmerie, the three men were beaten with weapon butts. They were at the gendarmerie for three days, during which time they were severely tortured before they were released.

2.3 According to the author, a woman and her 6-year-old daughter were also killed by the municipal police in the course of this operation. However, the evening news programme on national television reported that seven women from Oudjana had been killed by terrorists, with no mention of the raid by the security forces. The next day a death certificate was made out by the doctor in Taher for Nedjma Bouzaout, referring only to violent death. The case note drawn up on 30 August 1999 by the National gendarmerie at Taher on the basis of the report of the Boucherka-Taher gendarmerie, dated 27 January 1996, states that Nedjma Bouzaout was killed by members of an armed terrorist group.

2.4 Following Nedjma Bouzaout's death an investigation was launched by the Taher court and the author was called to a hearing by the investigating judge. The judge accused him of making false accusations against the security forces and refused to record his statements. The author says he has no idea what action was taken following the investigation as he was shut out of the proceedings and no contact was ever made with him again in the matter, either by the investigating judge or by the prosecution. In addition, the climate of fear that prevailed in the region deterred him from bringing a complaint against the municipal police, as they had the power of life and death over everyone who lived in the area. Only when the general security situation improved in 2001 did the author dare to resume his efforts to obtain justice. On 26 November 2001 he brought a complaint against those responsible for his wife's murder with the Jijel prosecutor's office. No action has been taken, however.

### **The complaint**

3.1 The author claims that the State party violated article 6, paragraph 1, of the Covenant in respect of his wife, Nedjma Bouzaout, article 7 in respect of himself and article 2, paragraph 3, of the Covenant in respect of the author.

3.2 In the author's view, his wife's death, which he witnessed, is directly attributable to the State officials who shot her point-blank in the course of a raid on the family home by municipal police on 26 January 1996. He recalls that, according to article 4, paragraph 2, of the Covenant, the right to life is an inalienable right from which there can be no derogation, even in time of public emergency which threatens the life of the nation. The author argues that the violation of the right to life of which Nedjma Bouzaout was a victim was even more reprehensible because it resulted from deliberate action by the security forces and

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<sup>1</sup> Identified by the author in the communication.

because no investigation has been carried out to establish what actually happened. The author describes his wife's death as a summary execution carried out as part of a systematic and widespread practice and thus constituting a violation of the right to life within the meaning of article 6, paragraph 1, of the Covenant, and also a crime against humanity. In this regard the author refers to the Committee's general comment No. 31 (2004), on the nature of the general legal obligation imposed on States parties to the Covenant, paragraph 18.

3.3. The author claims to be a victim of a violation of article 7 of the Covenant by reason of the physical violence (beatings with gun butts) he was subjected to on his arrest by the municipal police and the torture he underwent during the three days of detention at the gendarmerie in Taher. In this regard he recalls that the Committee against Torture has recognized the resurgence of torture in Algeria starting in 1991.<sup>2</sup> He states that, at the time he was detained, the national gendarmerie was systematically administering torture in detention.

3.4. The author emphasizes that the State party has failed in its obligation to investigate and adjudicate the specific human rights violation against him.<sup>3</sup> By not opening an enquiry into the execution of Nedjma Bouzaout, the Algerian authorities have failed to meet their obligation to guarantee access to effective remedies to anyone claiming a violation of any of their rights, even though this is guaranteed under article 2, paragraph 3, of the Covenant. He also recalls that, according to the Committee, failure to meet the obligation to investigate allegations of human rights violations could constitute a separate violation of the Covenant.<sup>4</sup>

3.5. The author points out that, since February 2006 and the promulgation of Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation, it has been forbidden to bring charges against members of the Algerian defence or security forces. He recalls that the Committee has found that this Ordinance seems to promote impunity and infringe the right to an effective remedy.<sup>5</sup> He contends that he has been unable to assert his right to an effective remedy and that the State party has failed in its obligation to guarantee that right, in violation of article 2, paragraph 3, of the Covenant.

3.6. As to the admissibility of the communication, the author points out that he has attempted all possible remedies and all have proved ineffective. He reported his wife's execution to the competent judicial authority but the courts did not order an enquiry, despite the fact that, under article 63 of the Code of Criminal Procedure, "when an offence is brought to their attention, the criminal investigation officers..., acting either on the instructions of the State prosecutor or on their own initiative, shall undertake preliminary inquiries". The author notes that he certainly made a statement to the investigating judge of the Taher court regarding the events he had witnessed, but the judge refused to record his testimony against the security officers. He also notes that a death certificate referring to death by violence ought automatically to have been referred to the prosecutor's office, which should have carried out an autopsy and ordered an investigation. The author has never heard whether any such action was taken. He explains that he did not attempt to follow the proceedings at the time and find out what action the prosecution had taken or, for example, to appeal the discontinuance or closure of the case, because of the climate of

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<sup>2</sup> The author refers to the annual report of the Committee against Torture (A/52/44), paras. 70–80.

<sup>3</sup> The author refers to the Committee's concluding observations on the third periodic report of Algeria, adopted on 1 November 2007 (CCPR/C/DZA/CO/3), para. 12.

<sup>4</sup> The author refers to the Committee's concluding observations on the third periodic report of Algeria (CCPR/C/DZA/CO/3), para. 12.

<sup>5</sup> The author refers to the Committee's concluding observations on the third periodic report of Algeria (CCPR/C/DZA/CO/3), para. 7.

terror and impunity in the region, and also because it was clear that the justice system and the perpetrators were on the same side.

3.7. In 2001, when the security situation got better, the author lodged a formal complaint with the prosecutor's office at Jijel. The prosecutor decided not to order a judicial investigation and did not inform the author of the outcome of the investigation launched in 1996 based on the gendarmerie report of 27 January 1996. Accordingly, the author believes he has exhausted domestic remedies, all of which proved ineffective. Lastly, he recalls that Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation places all domestic remedies beyond reach; he therefore considers that the communication is receivable by the Committee.

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

4.1 In a note of 11 January 2011, the State party contested the admissibility of the communication. It is of the view that, like earlier communications concerning cases of enforced disappearance attributed to State officials in the years from 1993 to 1998, this communication should be examined taking "a comprehensive approach" and should be declared inadmissible. The State party recalls that the period in question is covered by the provisions of the Charter for Peace and National Reconciliation. It maintains that considering complaints to the Committee on an individual basis makes it impossible to place the events in the context of the sociopolitical and security conditions prevailing in the country at a time of crisis marked by a serious upsurge in terrorism following calls for civil disobedience, violent subversion and armed terrorist action against the Republican State, its constitutional institutions and its symbols. The State party maintains that this was not a civil war; what had happened was that a multitude of armed groups professing religious fundamentalism had emerged, waging pseudo-jihad and terrorizing the civilian population by, among other things, extortion, plundering, rape and mass killings. It was in that context that, on 13 February 1992, the Algerian Government informed the United Nations Secretariat of its declaration of a state of emergency, in accordance with article 4, paragraph 3, of the Covenant.

4.2. The State party emphasizes that at this time armed groups were staging attacks almost daily, which undermined the Government's ability to control the security situation. In some areas, civilians had trouble distinguishing antiterrorist and law-enforcement operations mounted by the Armed Forces and security services from the attacks and atrocities committed by terrorist groups. According to the State party, the violations of fundamental rights alleged in this communication must be seen in this perspective.

4.3 The State party asserts that the Charter for Peace and National Reconciliation is the internal mechanism whereby the nation can emerge from crisis. It was approved by the sovereign people in a referendum, in order to restore peace and social harmony, and heal the wounds inflicted by terrorism on the civilian population, in accordance with the aims and principles of the United Nations. It maintains that, in accordance with the principle of the inalienability of peace, the Committee should support and consolidate peace and encourage national reconciliation with a view to strengthening the rule of law.

4.4 The State party then turns its attention to the nature, principles and content of the Charter for Peace and National Reconciliation and its implementing legislation. As part of this effort to achieve national reconciliation, the implementing Ordinance prescribes legal measures for the discontinuance of criminal proceedings and the commutation or remission of sentences for any person who is found guilty of acts of terrorism or who benefits from the provisions of the legislation on civil dissent, except for persons who have committed or been accomplices in mass killings, rapes or bombings in public places. This Ordinance also helps to address the issue of disappearances by introducing a procedure for filing an official finding of presumed death, which entitles beneficiaries to receive compensation as victims

of the “national tragedy”. Social and economic measures have also been put in place, including the provision of employment placement assistance and compensation for all persons considered victims of the “national tragedy”. Finally, the Ordinance prescribes political measures, such as a ban on holding political office for any person who exploited religion in the past in a way that contributed to the “national tragedy”. It also establishes the inadmissibility of any proceedings brought by any individual or group against members of any branch of Algeria’s defence and security forces for actions undertaken to protect persons and property, safeguard the nation and preserve its institutions. The State party insists that the proclamation of the Charter for Peace and National Reconciliation reflects a desire to avoid confrontation in the courts, media outpourings and political score-settling. National reconciliation in the terms of the Charter is not an individual process or an excuse for forgiving and forgetting with impunity, but a collective democratic response. The State party is therefore of the view that the author’s allegations are covered by the comprehensive domestic settlement mechanism provided for in the Charter.

4.5 The State party also argues that domestic remedies have not been exhausted by the author and that the communication is thus inadmissible. It stresses the importance of distinguishing between formalities involving the political or administrative authorities, non-litigious remedies pursued through advisory or mediation bodies, and litigation pursued through the relevant courts of justice. The State party observes that, as may be seen from the author’s complaint, he has written letters to political and administrative authorities, petitioned advisory and mediation bodies and petitioned representatives of the prosecution service (chief prosecutors and public prosecutors), but has not actually initiated legal proceedings and seen them through to their conclusion. Of all these authorities, only the representatives of the prosecution service are authorized by law to open a preliminary inquiry and to have an investigating judge investigate a case as part of a judicial enquiry. Under the Algerian legal system, it is the public prosecutors who receive complaints and institute criminal proceedings where these are warranted. However, in order to protect the rights of victims and their beneficiaries, the Code of Criminal Procedure authorizes the latter to sue for damages by filing a complaint with the investigating judge. This option enables the victim or their beneficiaries to remedy an omission or lack of action on the part of the public prosecutor’s office by initiating proceedings even where the prosecutor has decided to discontinue the case or not act on a complaint. In that case, it is the victim, not the prosecutor, who institutes criminal proceedings by bringing the matter before the investigating judge, and the judge is obliged to investigate the facts described in the complaint. The State party notes that this remedy, which is provided for under articles 72 and 73 of the Code of Criminal Procedure, has not been used by the author, despite the fact that it is simple, expeditious and widely used by victims complaining of criminal acts.

4.6 The State party insists that the author cannot invoke Ordinance No. 06-01 of 27 February 2006 and its implementing legislation as a pretext for failing to institute the legal proceedings available to him. The State party recalls the Committee’s jurisprudence to the effect that a person’s subjective belief in, or presumption of, the futility of a remedy does not exempt that person from the requirement to exhaust all domestic remedies.<sup>6</sup>

4.7 The State party asks the Committee to take into account the sociopolitical and security context in which the events and situations described by the author occurred; to find that the author failed to exhaust all domestic remedies; to recognize that the authorities of the State party have established a comprehensive domestic mechanism for processing and settling 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

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

United Nations and subsequent covenants and conventions; to find the communication inadmissible; and to request that the author seek an alternative remedy.

#### **Author's comments on the State party's submission**

5.1 On 19 March 2012 the author submitted comments on the State party's observations on the admissibility of the communication.

5.2 The author refers to the State party's contention that the Committee cannot consider individual communications concerning serious human rights violations such as violations of the right to life because such communications should be examined in a global context, and an individual approach would not reflect the sociopolitical and security context in which the events occurred. The author notes that it is not up to the State party to decide, according to its own criteria, which specific situations fall within the Committee's jurisdiction. He points out that the State party has recognized the competence of the Committee to consider individual communications and that only the Committee can determine which communications are admissible under the Covenant and the Optional Protocol.

5.3 The author emphasizes that the State party cannot invoke its declaration of a state of emergency on 9 February 1992 to contest the admissibility of the communication. 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.

5.4 In addition, the author rejects the State party's argument that domestic remedies were not exhausted because he did not institute criminal proceedings by bringing the matter before an investigating judge, in accordance with the Algerian Code of Criminal Procedure. The author recalls that, for such a procedure to be admissible, payment of surety to cover procedural costs is required; the amount is set arbitrarily by the investigating judge<sup>7</sup> and thus in practice acts as a deterrent to litigants, who in any case have no guarantee that such a procedure will actually lead to a prosecution. The author emphasizes that, in criminal matters, the prosecution is legally obliged to investigate as soon as the facts are brought to its attention, even where there is no complaint. In this case, an enquiry was indeed opened and the author questioned by the investigating judge of the Taher court concerning the murder of his wife, yet no action was taken after that. The author points out that it has sometimes happened that investigations were formally set in motion where members of local militias were implicated in crimes, but this was purely an attempt to establish a façade of legality that would allow the court to dismiss the case. The author recalls that his statement regarding the murder of his wife and the torture he was subjected to was not recorded by the investigating judge, and that the judge in fact rejected it, accusing him of bringing false charges of murder against the security services. Any recourse to a domestic court, therefore, proved impossible.

5.5 The author also brought a complaint in 2001 against his wife's alleged killers, with the prosecutor's office at the Taher court, also without success. The author argues that all remedies have proved unavailable owing to the partiality shown by the prosecution in refusing to investigate a case implicating State officials, even though they had been clearly identified by the author.

5.6 The author recalls the Committee's case law to the effect that bringing a suit for criminal damages is not a necessary condition for the exhaustion of domestic remedies in cases of serious human rights violations such as, in this case, a violation of the right to life. He cites the Committee's jurisprudence to the effect that the State party has a duty not only to carry out thorough investigations of alleged violations of human rights, particularly enforced disappearances or violations of the right to life, but also to prosecute, try and

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<sup>7</sup> Code of Criminal Procedure, art. 75.

punish anyone held to be responsible for such violations. To sue for damages for offences as serious as those alleged in the present case cannot be considered a substitute for the charges that should be brought by the public prosecutor.<sup>8</sup>

5.7. Lastly, the author recalls that Ordinance No. 06-01 of 27 February 2006, implementing the Charter for Peace and National Reconciliation, precludes any possible civil or criminal action in the Algerian courts for crimes committed by the security forces during the civil war. He notes that the Committee is of the view that this legislation appears to promote impunity, violate the right to an effective remedy, and is not compatible with the provisions of the Covenant.<sup>9</sup>

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

#### *Consideration of admissibility*

6.1 The Committee recalls that the joinder of admissibility and merits, in conformity with the decision by the Special Rapporteur (see para. 1.2), does not preclude the two matters being considered separately. Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

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

6.3 The Committee notes that, in the State party's view, the author has not exhausted domestic remedies, since he did not bring the matter before the investigating judge and sue for damages in criminal proceedings under articles 72 and 73 of the Code of Criminal Procedure. The Committee also notes that, according to the State party, the author has written letters to political and administrative authorities and has petitioned representatives of the prosecution service (chief prosecutors and public prosecutors), but has not, strictly speaking, initiated legal action and seen it through to its conclusion by availing himself of all available remedies of appeal and cassation. The Committee also takes note of the author's argument that he was questioned by the investigating judge regarding his wife's killing and that he made a complaint to the Taher prosecutor's office some years later, but that at no time did the authorities make any genuine investigation into the alleged violations. Lastly, the Committee notes that, according to the author, under article 46 of Ordinance No. 06-01, anyone bringing a complaint in respect of acts mentioned in article 45 of the Ordinance may be punished.

6.4 The Committee recalls that the State party has a duty not only to conduct thorough investigations of alleged violations of human rights brought to the attention of its authorities, in particular alleged violations of the right to life, but also to prosecute, try and punish any person assumed to be responsible for such violations.<sup>10</sup> The Algerian authorities were told of the murder of the author's wife immediately it happened and started proceedings but took no further action. The author complained again in 2001, but the State party failed to carry out a thorough and effective investigation into the crime. Recalling its

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<sup>8</sup> Communication No. 1588/2007, *Benaziza v. Algeria*, Views adopted on 26 July 2010, para. 8.3.

<sup>9</sup> CCPR/DZA/CO/3, paras. 7, 8 and 13.

<sup>10</sup> See, for example, communication No. 1779/2008, *Mezine v. Algeria*, Views adopted on 25 October 2012, para. 7.4; communication No. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 7.4; communication No. 1905/2009, *Khirani v. Algeria*, Views adopted on 26 March 2012, para. 6.4; and communication No. 1791/2008, *Boudjemai v. Algeria*, Views adopted on 22 March 2013, para. 7.4.



jurisprudence, the Committee considers that to sue for damages for offences as serious as those alleged in the present case cannot be considered a substitute for the charges that should be brought by the public prosecutor.<sup>11</sup>

6.5 The Committee also takes note of the author's allegations concerning the murder of his wife and his claims to have been severely tortured by the municipal police on the journey from his home to the gendarmerie, and by the gendarmes during his three days of detention at the gendarmerie. In the absence of any comments by the State party on the matter, the Committee finds that the author has sufficiently substantiated his complaints under articles 6, paragraph 1, 7 and 2, paragraph 3, of the Covenant for the purposes of admissibility.<sup>12</sup>

6.6 Having found no impediment to the admissibility of the author's claims under articles 2 (para. 3), 6 (para. 1) and 7 of the Covenant, the Committee proceeds to their consideration on the merits.

#### *Consideration on 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 submitted collective and general observations in response to serious allegations by the author, and has been content to argue that communications incriminating public officials, or persons acting on behalf of public authorities, in cases of violations of the right to life between 1993 and 1998 should be considered within the broader context of the sociopolitical and security conditions that prevailed in the country during a period when the Government was struggling with terrorism. The Committee refers to its case law<sup>13</sup> 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 demands that the State party concern itself with the fate of every individual and treat every individual with respect for the dignity inherent in every human being. Ordinance No. 06-01, without the amendments recommended by the Committee, appears to promote impunity and therefore cannot, as it currently stands, be considered compatible with the provisions of the Covenant.

7.3 The Committee notes that the State party has not replied to the author's claims concerning the merits of the case, and recalls its jurisprudence<sup>14</sup> according to which the burden of proof should not rest solely on the author of a communication, especially given that the author and the State party do not always have the same degree of access to evidence and that often only the State party is in possession of the necessary information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has a duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with whatever information is available to it.<sup>15</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.

<sup>11</sup> See *Mezine v. Algeria*, para. 7.4; *Benaziza v. Algeria*, para. 8.3; and *Khirani v. Algeria*, para. 6.4.

<sup>12</sup> See communication No. 1890/2009, *Kitenge Baruani v. Democratic Republic of the Congo*, Views adopted on 27 March 2014, para. 5.4.

<sup>13</sup> See, for example, *Mezine v. Algeria*, para. 8.2; and *Berzig v. Algeria*, para. 8.2.

<sup>14</sup> See, for example, *Mezine v. Algeria*, para. 8.3; 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, para. 7.4; and *Berzig v. Algeria*, para. 8.3.

<sup>15</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.

7.4 The Committee notes that, according to the author, his wife was killed by municipal police on 26 January 1996 in an attack on the family home by security forces. This police operation followed the killing of three women in the previous day by an unidentified armed group. The Committee notes that the State party has produced no evidence refuting the author's allegation or indicating that it has fulfilled its obligation to protect Nedjma Bouzaout's life during the police operation. Therefore the Committee finds that the State party has violated the right to life of Nedjma Bouzaout as guaranteed by article 6, paragraph 1, of the Covenant.<sup>16</sup>

7.5 The Committee notes that the author claims to have been subjected to various brutal forms of torture and violence of other kinds by the municipal police and gendarmes on the journey from his home to the gendarmerie and while in detention at the gendarmerie. Here again the Committee notes that the State party has submitted no evidence to refute this claim or indicate that it has fulfilled its obligation to prevent acts of torture or inhuman, cruel or degrading treatment against the author. In the absence of any explanation by the State party, due weight must be given to the author's claims<sup>17</sup> and the Committee finds that the author's treatment constitutes a violation of article 7 of the Covenant.

7.6 The author invokes article 2, paragraph 3, of the Covenant, which imposes on the State party 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), whereby 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 author made a statement to the court and subsequently made a complaint to the competent authorities regarding his wife's killing, and also informed them of the torture he underwent, but all these efforts were in vain. The State party has failed to conduct a thorough and effective investigation into these events. Furthermore, the absence of the legal right to take judicial proceedings since the promulgation of Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation continues to deprive the author and his family of access to any effective remedy, since the Ordinance prohibits the pursuit of legal remedies to shed light on the most serious crimes such as violations of the right to life or torture.<sup>18</sup> The Committee therefore finds that the facts before it reveal a violation of article 2, paragraph 3, of the Covenant, read in conjunction with articles 6, paragraph 1, and 7 of the Covenant 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 violations by the State party of article 6, paragraph 1, in respect of Nedjma Bouzaout, article 7 in respect of the author, and article 2, paragraph 3, read in conjunction with articles 6, paragraph 1, and 7, in respect of the author.

9. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author and his family with an effective remedy, including by: (a) conducting a thorough and effective investigation into the death of Nedjma Bouzaout; (b) providing the author and his family with detailed information about the results of its investigation; (c) prosecuting, trying and punishing those responsible for the violations

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<sup>16</sup> See *Mezine v. Algeria*, para. 8.4.

<sup>17</sup> See, for example, communication No. 1761/2008, *Giri v. Nepal*, Views adopted on 24 March 2011, para. 7.4; No. 1422/2005, *El Hassy v. Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 6.2; communication No. 458/1991, *Mukong v. Cameroon*, Views adopted on 21 July 1994, para. 9.2; and *Kitenge Baruani v. Democratic Republic of the Congo*, para. 6.3.

<sup>18</sup> CCPR/C/DZA/CO/3, para. 7.

committed; and (d) providing adequate compensation to the author for the violations suffered. Notwithstanding the terms of Ordinance No. 06-01, the State party should also 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 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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