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Communication No. 2098/2011

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

<i>Submitted by:</i>	Tahar Ammari (represented by counsel, Nassira Dutour of the Collectif des Familles de Disparus en Algérie (Coalition of Families of Disappeared Persons in Algeria))
<i>Alleged victims:</i>	Toufik Ammari (son of the author) and the author himself
<i>State party:</i>	Algeria
<i>Date of communication:</i>	8 June 2011 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 13 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; prohibition of torture and cruel, inhuman or degrading 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 right to a hearing by an impartial tribunal
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	Articles 2 (para. 3), 7, 9, 10 (para. 1) and 16
<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. 2098/2011*

<i>Submitted by:</i>	Tahar Ammari (represented by counsel, Nassira Dutour of the Collectif des Familles de Disparus en Algérie (Coalition of Families of Disappeared Persons in Algeria))
<i>Alleged victims:</i>	Toufik Ammari (son of the author) and the author himself
<i>State party:</i>	Algeria
<i>Date of communication:</i>	8 June 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. 2098/2011, submitted to the Human Rights Committee by Tahar Ammari 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, dated 8 June 2011, is Tahar Ammari, a public letter-writer, born on 22 December 1932 in Bordj Bou Arréridj, Algeria. He claims that his son, Toufik Ammari, is the victim of an enforced disappearance attributable to the State party, in violation of articles 2 (para. 3), 7, 9, 10, 14 and 16 of the Covenant. The author maintains that he himself is the victim of violations of articles 2 (para. 3), 7 and 14 of the

* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Christine Chanet, Ahmed Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Gerald L. Neuman, Sir Nigel Rodley, Fabián Omar Salvioli, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

Pursuant to rule 90 of the Committee's rules of procedure, Lazhari Bouzid did not participate in the adoption of the present decision.

The text of an individual (concurring) opinion by Fabián Omar Salvioli is appended to the present Views.

Covenant. He is represented by Nassira Dutour of the Collectif des Familles de Disparus en Algérie (Coalition of Families of Disappeared Persons in Algeria).

1.2 On 26 October 2011, the Committee, through its Special Rapporteur on new communications and interim measures, decided not to consider the admissibility and the merits of the communication separately.

The facts as submitted by the author

2.1 Toufik Ammari, born on 20 November 1966 in Bordj Bou Arréridj *wilaya*, was married with one child and taught at the secondary school in Hasnaoua commune. On Sunday, 27 August 1995, at about 8.30 a.m., he left his home and has not been seen by his family since. A few hours later, uniformed officers of the criminal investigation department for Bordj Bou Arréridj *wilaya* entered the Ammari family home. After searching all the rooms, the officers seized Toufik Ammari's certificate of employment, some photographs and other documents belonging to him, as well as his family civil-status book, which was returned to his wife four months later. The officers did not attempt to justify their actions, nor did they have a search warrant. This illegal search took place while the author was working at the covered market in the town centre. At this time, two armed officers of the criminal investigation department approached the author and escorted him back to his home, where the search was in progress. He could see that a group of some 20 officers had surrounded the family home. Before they left, one of the officers asked the author to sign the search report, which was marked: "Search unsuccessful: nothing found".

2.2 The following day, the author went to Bordj Bou Arréridj police station to try to discover his son's whereabouts but obtained no information. On 11 December 1995, the author was summoned to the premises of the security authorities' criminal investigation department for Bordj Bou Arréridj *wilaya*, where he requested, in vain, to know what had become of his son. Since Toufik Ammari's disappearance, his family has attempted numerous times to find out what occurred on 27 August 1995. Several years later, rumours circulated to the effect that he had been detained and incarcerated in Sétif *wilaya* in around September 1998.

2.3 The author took several steps: on 1 September 1999 he lodged an initial complaint with the Public Prosecutor at Aïn Oulmene Court in Sétif *wilaya*. Subsequently, he filed another 10 complaints with the prosecutors of every *wilaya* in the surrounding region. Some authorities acknowledged receipt of these complaints, but only the prosecutor's offices at Bordj Bou Arréridj Court and Bordj Zemmourah Court conducted investigations, to no avail. The author was summoned and questioned by the Mansourah Prosecutor, who decided not to proceed with the case, as well as by the Bordj Bou Arréridj gendarmerie, which told him that inquiries would be carried out but did nothing. In addition, between 1998 and 2001, the author wrote to the Bordj Bou Arréridj *wilaya* authorities and to the highest authorities of the State party, namely the President of the Republic, the Prime Minister and the Ministry of Justice.¹ In these letters, the author sought access to information that could shed light on his son's fate, in particular whether he had been detained and, if so, where. The author also requested the opening of an investigation. He never received any reply.

2.4 The case of Toufik Ammari was submitted to the Working Group on Enforced or Involuntary Disappearances in September 2007.

¹ He wrote to the President of the Republic and the Prime Minister on 9 May 1999, and he renewed his complaint to the President of the Republic on 29 August 1999 and on 15 May 2000. He wrote to the Ministry of Justice on 9 July 2001 and on 28 September 2001.

The complaint

3.1 The author believes that his son's enforced disappearance since 27 August 1995 is attributable to the authorities of the State party and constitutes a violation of articles 7, 9, 10, 14 and 16, read alone and in conjunction with article 2 (para. 3) of the Covenant, with regard to Toufik Ammari, and of articles 7 and 14, read alone and in conjunction with article 2 (para. 3) of the Covenant, with regard to the author.

3.2 According to the author, the disappearance of Toufik Ammari followed his arrest by the Bordj Bou Arréridj criminal investigation department. He cites by way of evidence the fact that a large number of officers were deployed to conduct a search of the Ammari family home in the hours after his son's disappearance, without any explanation being provided or any search warrant produced. Moreover, the officers took away Toufik Ammari's family civil-status book and kept it for four months, along with other documents and effects belonging to him. Finally, the author heard a rumour that Toufik Ammari had been seen some years later in detention in Sétif *wilaya*.

3.3 Referring to the Committee's jurisprudence,² the author states that his son's enforced disappearance constitutes a violation of article 7 of the Covenant, since the circumstances of the disappearance and the total secrecy as to Toufik Ammari's place of detention and state of health are recognized as constituting in and of themselves a form of inhuman or degrading treatment. The author also emphasizes that prolonged incommunicado detention is conducive to the practice of torture and the infliction of inhuman or degrading treatment on the detainee and that, according to the Committee's jurisprudence, the disappearance of a loved one constitutes a violation of article 7 of the Covenant with regard to his or her family.

3.4 The author, who has had no information about his son's fate since 27 August 1995, is convinced that his son was arbitrarily arrested that day by officers of the criminal investigation department, without his family, or in all likelihood Toufik Ammari himself, being informed of the reasons for his arrest. There were no legal grounds for the arrest, and his detention was not formalized or entered in the custody register. There is no official record of the arrest or the ensuing incommunicado detention. Toufik Ammari was thus deprived of all the fundamental guarantees with respect to deprivation of liberty stipulated in article 9 of the Covenant.

3.5 Referring to the Committee's jurisprudence,³ the author points out that his son's enforced disappearance and subsequent incommunicado detention constitute violations of his right to be treated with humanity and respect while deprived of liberty, as provided in article 10, paragraph 1, of the Covenant.

3.6 The author also alleges a violation of article 14 of the Covenant, as he considers that Toufik Ammari was not able to have his case heard by a competent, independent and impartial tribunal established by law. Nor was he informed of the charges against him within a reasonable period. As his arrest was never acknowledged by the authorities of the State party, he was not granted any of the rights stipulated in article 14 of the Covenant, which would have allowed him to prove his innocence and obtain his release. The author believes that he himself was denied the opportunity to assert his civil rights in relation to his son's arrest before an independent and impartial tribunal established by law.

3.7 The author further maintains that his son's right to recognition as a person before the law was violated, since, as a disappeared person, he was deprived of the capacity to

² Communications No. 449/1991, *Mojica v. 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.

³ Communication No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 9.2.

exercise his rights under the law or to have recourse to any remedy, which constitutes a violation of article 16 of the Covenant, as the Committee has recognized in similar circumstances.⁴

3.8 The author recalls that he has tried all the available judicial remedies, submitting complaints to the prosecutor's offices in all the nearby *wilayas*, but that no effective investigation has been conducted. Two inquiries launched by two different prosecutors yielded no results. The author has also written to the Ministry of the Interior, the Ministry of Justice, the Office of the President of the Republic and the Prime Minister without obtaining any reply elucidating his son's fate. The author considers that the State party has violated its positive obligations under the Covenant to follow up on any complaint of serious violations of rights guaranteed by the Covenant and to conduct a prompt, impartial, thorough and effective investigation, informing the author of the outcome. The author believes that he has not had access to an effective remedy before the authorities of the State party, in violation of article 2 (para. 3), read in conjunction with articles 7, 9, 10 (para. 1), 14 and 16 of the Covenant. Since the promulgation of Ordinance No. 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation, no legal action may be brought under domestic law. Although the remedies were already ineffective, since the Ordinance's promulgation they have ceased to be available.

3.9 The author asks the Committee to order the State party: (a) to release Toufik Ammari if he is still alive; (b) to conduct a prompt, thorough and effective investigation into his disappearance; (c) to report to the author and his family on the results of the investigation; (d) to prosecute, try and punish the persons responsible for Toufik Ammari's disappearance, in conformity with the State party's international commitments; and (e) to provide appropriate reparation to Toufik Ammari's beneficiaries for the grave moral and material harm which they have suffered since his disappearance. The author therefore calls for adequate compensation proportionate to the gravity of the offence and covering moral damage and physical and psychological harm as well as rehabilitation measures comprising medical and psychological assistance and guarantees of non-repetition.

State party's observations on admissibility

4.1 On 4 October 2011, the State party contested the admissibility of the communication, submitting a copy of its background memorandum, in which it expresses the view that the communication, which incriminates public officials or other persons acting on behalf of public authorities in cases of enforced disappearance during the period from 1993 to 1998, should be examined taking "a comprehensive approach" and should be declared inadmissible. The State party considers that such communications should be placed in the broader context of the sociopolitical situation and security conditions that prevailed in the country during a period when the Government was struggling to combat a form of terrorism aimed at provoking the "collapse of the Republican State". It was in this context, and in conformity with the Constitution (arts. 87 and 91), that the Algerian Government implemented precautionary measures and 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, in some areas characterized by the proliferation of informal settlements, civilians had trouble distinguishing the actions of terrorist groups from those of the security forces, to which they often attributed enforced disappearances. According to the State party, a large number of enforced disappearances must be seen in

⁴ Communications No. 1327/2004, *Atamna v. Algeria*, Views adopted on 10 July 2007, para. 7.8; 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.

this perspective. The concept of disappearance in Algeria during the period in question actually covers six distinct scenarios. The first scenario concerns persons reported missing by their relatives but who in fact had chosen to go into hiding in order to join armed groups and had asked their families to report that they had been arrested by the security services, as a way of “covering their tracks” and avoiding “harassment” by the police. The second scenario concerns persons who were reported missing after their arrest by the security services but who took advantage of their release to go into hiding. The third scenario concerns persons abducted by armed groups which, because they were not identified or because they had stolen uniforms or identification documents from police officers or soldiers, were mistakenly thought to belong to the armed forces or security services. The fourth scenario concerns persons whose families reported them missing, whereas in fact they had abandoned them, and sometimes even left the country, to escape personal problems or family disputes. The fifth scenario concerns persons reported missing by their families but who were in fact wanted terrorists who had been killed and buried in the maquis following factional infighting, doctrinal disputes or arguments over the spoils of war among rival armed groups. The sixth scenario mentioned by the State party concerns persons reported missing who were actually living in Algeria or abroad under false identities provided by networks of document forgers.

4.3 The State party maintains that it was in view of the diversity and complexity of the situations covered by the general concept of disappearance that the Algerian legislature, following the referendum on the Charter for Peace and National Reconciliation, recommended a comprehensive approach to the issue of disappeared persons that took into account all persons who had disappeared in the context of the “national tragedy”, and under which all victims would be offered support to overcome their ordeal and all victims of disappearance and their beneficiaries would be entitled to redress. According to statistics from the Ministry of the Interior, 8,023 disappearances have been reported, 6,774 cases examined, 5,704 approved for compensation and 934 rejected, and 136 are still pending. A total of 371,459,390 Algerian dinars has been paid out as compensation to the victims concerned. In addition, a total of 1,320,824,683 dinars has been paid out in the form of monthly pensions.

4.4 The State party considers that the author has not exhausted all domestic remedies. It stresses the importance of distinguishing between simple formalities involving the political or administrative authorities, non-judicial remedies pursued through advisory or mediation bodies, and judicial remedies pursued through the competent 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 and petitioned advisory or mediation bodies as well as 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 judicial review. Of all these authorities, only the representatives of the prosecution service are authorized by law to open a preliminary inquiry and refer a case to an investigating judge. In the Algerian legal system, it is the public prosecutor who receives complaints and who institutes criminal proceedings if these are warranted. Nevertheless, 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. In this case, it is the victim, not the prosecutor, who institutes criminal proceedings by bringing the matter before the investigating judge. This remedy, which is provided for in articles 72 and 73 of the Code of Criminal Procedure, was not utilized, despite the fact that it would have enabled the author to institute criminal proceedings and compel the investigating judge to launch an investigation, even if the prosecution service had decided otherwise.

4.5 The State party also notes the author’s contention that the adoption by referendum of the Charter for Peace and National Reconciliation and its implementing legislation — in

particular, article 45 of Ordinance No. 06-01 — rules out the possibility that any effective and available domestic remedies exist in Algeria to which the families of victims of disappearance could have recourse. On this basis, the author believed he did not need to bring the matter before the relevant courts, in view of their likely position and findings regarding the application of the Ordinance. However, the author cannot invoke this Ordinance 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.⁵

4.6 The State party then turns its attention to the nature, principles and content of the Charter for Peace and National Reconciliation and its implementing legislation. It maintains that, in accordance with the principle of the inalienability of peace, which has become an international right to peace, the Committee should support and consolidate peace and encourage national reconciliation with a view to strengthening States affected by domestic crises. As part of this effort to achieve national reconciliation, the State party adopted the Charter, and its 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. The Ordinance also helps to address the issue of disappearances by introducing a procedure for filing an official finding of presumed death, which entitles beneficiaries of disappeared persons to receive compensation as victims of the "national tragedy". In addition, social and economic measures have 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", and establishes the inadmissibility of individual or collective proceedings brought against members of any branch of the defence and security forces of Algeria for actions undertaken to protect persons and property, safeguard the nation and preserve its institutions.

4.7 In addition to the establishment of funds to compensate all victims of the "national tragedy", the sovereign people of Algeria have, according to the State party, agreed to a process of national reconciliation as the only way to heal the wounds inflicted. The State party insists that the proclamation of the Charter for Peace and National Reconciliation reflects a desire to avoid confrontation in the courts, media outpourings and political score-settling. The State party is therefore of the view that the author's allegations are covered by the comprehensive domestic settlement mechanism provided for in the Charter.

4.8 The State party asks the Committee to note how similar the facts and situations described by the author are to those described by the authors of the previous communications concerned by the memorandum of 3 March 2009 and to take account of the sociopolitical and security context in which they occurred. It also asks the Committee 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 United Nations and subsequent covenants and conventions; to find the communication inadmissible; and to request that the author seek an alternative remedy.

⁵ The State party cites, in particular, communications No. 210/1986 and No. 225/1987, *Pratt and Morgan v. Jamaica*, Views adopted on 6 April 1989.

State party's additional observations on admissibility

5.1 On 4 October 2011, the State party transmitted an additional memorandum to the Committee, in which it questioned the intention behind the series of individual communications submitted to the Committee since the beginning of 2009, which in its view actually amounted to an abuse of procedure aimed at bringing before the Committee a broad historical issue involving causes and circumstances of which the Committee is unaware. The State party observes that all these "individual" communications dwell on the general context in which the disappearances occurred. The State party notes that the complaints focus solely on the actions of the security forces and never mention those of the various armed groups that used criminal concealment techniques to incriminate the armed forces.

5.2 The State party indicates that it will not address the merits of these communications until the issue of their admissibility has been settled. It adds that all judicial or quasi-judicial bodies have a duty to deal with preliminary questions before considering the merits. According to the State party, the decision in the cases in point to consider questions of admissibility and the merits jointly and simultaneously — aside from the fact that it was not arrived at on the basis of consultation — seriously prejudices the proper consideration of the communications in terms of both their general nature and their intrinsic particularities. Referring to the rules of procedure of the Human Rights Committee, the State party notes that the sections relating to the Committee's procedure to determine the admissibility of communications are separate from those relating to the consideration of communications on the merits, and that therefore these questions could be considered separately. Concerning the exhaustion of domestic remedies, the State party stresses that the author did not submit any complaints or requests for information through channels that would have allowed consideration of the case by the Algerian judicial authorities.

5.3 Recalling the Committee's jurisprudence regarding the obligation to exhaust domestic remedies, the State party stresses that mere doubts about the prospect of success or concerns about delays do not exempt the author from the obligation to exhaust these remedies. As to the question of whether the promulgation of the Charter for Peace and National Reconciliation has barred the possibility of appeal in this area, the State party replies that the failure by the author to submit his allegations to examination has prevented the Algerian authorities from taking a position on the scope and limitations of the applicability of the Charter. Moreover, under the Ordinance in question, the only proceedings that are inadmissible are those brought against "members of any branch of the defence and security forces of the Republic" for actions consistent with their duties to the Republic, namely, to protect persons and property, safeguard the nation and preserve its institutions. On the other hand, any allegations concerning actions attributable to the defence or security forces that can be proved to have taken place in any other context are subject to investigation by the appropriate courts.

Author's comments on the State party's submission

6.1 On 7 March 2012, the author submitted comments on the State party's observations on admissibility.

6.2 The author emphasizes that the State party has confined itself to submitting general and formulaic observations to contest the admissibility of the communication. He recalls all the steps he has taken, in vain, to secure the conduct of an investigation into his son's disappearance. He reiterates the argument made in his initial submission that he has exhausted all available domestic remedies and that all the remaining remedies have proved to be unavailable or ineffective, particularly since the promulgation of the Charter for Peace and National Reconciliation. He adds that filing a complaint and suing for damages, as provided for in articles 72 and 73 of the Code of Criminal Procedure, does not constitute an

appropriate remedy, since it is the responsibility of the authorities to investigate allegations of serious human rights violations, such as — in the case in point — the enforced disappearance of his son, of which they were informed by the author on numerous occasions.

6.3 The author also recalls that the implementation of the provisions of the aforementioned Charter cannot render the present communication inadmissible. He refers to the Committee's jurisprudence, in which it is pointed out that the State party should not invoke the provisions of the Charter against persons who invoke provisions of the Covenant or who have submitted or may submit communications to the Committee.⁶

Issues and proceedings before the Committee

Consideration of admissibility

7.1 The Committee recalls that the decision by the Special Rapporteur to examine the admissibility and the merits jointly (see paragraph 1.2 above) does not preclude the two issues being considered separately by the Committee. 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.

7.2 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 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.⁷ Accordingly, the Committee considers that the examination of Toufik Ammari's case by the Working Group on Enforced or Involuntary Disappearances does not render the communication inadmissible under this provision.

7.3 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, brought to the attention of its authorities, but also to prosecute, try and punish anyone held to be responsible for such violations.⁸ Although the author repeatedly contacted the competent authorities concerning his son's disappearance, the State party failed to conduct a thorough and effective investigation. 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.⁹ The Committee therefore concludes that article 5, paragraph 2 (b), of the Optional Protocol is not an obstacle to the admissibility of the present communication.

⁶ Communication No. 1588/2007, *Benaziza v. Algeria*, Views adopted on 26 July 2010, para. 9.2.

⁷ 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. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 7.2; and *Laureano Atachahua v. Peru*, para. 7.1.

⁸ See, inter alia, *Mezine v. Algeria*, para. 7.4; *Berzig v. Algeria*, para. 7.4; communication No. 1905/2009, *Khirani v. Algeria*, Views adopted on 26 March 2012, para. 6.4; and *Boudjemai v. Algeria*, para. 7.4.

⁹ 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.

7.4 The Committee considers that the author did not sufficiently substantiate his claim of a violation of article 14 of the Covenant, but that the allegations which raise issues under articles 2 (para. 3), 7, 9, 10 (para. 1) and 16, read alone and in conjunction with article 2 (para. 3) of the Covenant, have been sufficiently substantiated. The Committee therefore proceeds to consider the communication on the merits with regard to the alleged violations of articles 2 (para. 3), 7, 9, 10 (para. 1) and 16 of the Covenant.

Consideration of the merits

8.1 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.

8.2 The State party has confined itself to referring to the collective and general observations it submitted to the Committee previously in relation to other communications, reiterating its position that such cases were settled with the implementation of the Charter for Peace and National Reconciliation. The Committee recalls its jurisprudence, 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, is contributing to impunity in the present case and therefore cannot, as it currently stands, be considered compatible with the provisions of the Covenant.

8.3 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, 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.¹⁰ Pursuant to 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.¹¹ 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.

8.4 The Committee notes that the author's son was last seen leaving his home on the morning of 27 August 1995. In the hours after his departure, a large number of police officers were dispatched to conduct a search of the family home of the author and his son, and documents belonging to Toufik Ammari were seized; his family civil-status book was kept by the authorities for almost four months. The Committee notes that, even though the authorities of the State party have never acknowledged that they arrested and detained Toufik Ammari, the fact that his disappearance occurred at the same time as the search of the family home cannot be mere coincidence. In the absence of any explanations from the State party in this respect, and given that the case in point is to be seen in the context of a systematic practice of enforced disappearances in the State party during this period,¹² the

¹⁰ 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.

¹¹ See *Mezine v. Algeria*, para. 8.3; and communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 30 March 2006, para. 8.3.

¹² See Inter-American Court of Human Rights, *Velásquez Rodríguez*, judgement of 29 July 1988, para. 147.3.

Committee believes it likely that Toufik Ammari was arrested by the police officers on the morning of 27 August 1995 and that he disappeared while under the responsibility of the State party.

8.5 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 considers, in the case in point, that Toufik Ammari was arrested by the police officers on the morning of 27 August 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 Toufik Ammari.¹³

8.6 In view of the above, the Committee will not consider separately the claims based on the violation of article 10, paragraph 1, of the Covenant.

8.7 The Committee also takes note of the anguish and distress caused to the author and his family by the disappearance of his son. It considers that the facts before it disclose a violation with regard to them of article 7 of the Covenant.¹⁴

8.8 As to the alleged violation of article 9, the Committee notes the author's claim that his son was arbitrarily arrested without a warrant, that neither he nor his family were informed of the reasons for the arrest, and that Toufik Ammari was not charged or brought before a judicial authority, which would have enabled him to challenge the lawfulness of his detention. In the absence of satisfactory explanations from the State party, the Committee finds a violation of article 9 with regard to Toufik Ammari.¹⁵

8.9 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 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 judicial remedies (Covenant, art. 2, para. 3), have been systematically impeded.¹⁶ In the present case, the Committee notes that the State party has not furnished any explanation concerning the fate or whereabouts of Toufik Ammari (or the location of his remains), despite the author's multiple requests in that regard. The Committee concludes that the enforced disappearance of Toufik Ammari more than 19 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.

8.10 The author invokes article 2, paragraph 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

¹³ 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.

¹⁴ 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.

¹⁵ See, inter alia, *Mezine v. Algeria*, para. 8.7; *Khirani v. Algeria*, para. 7.7; and *Berzig v. Algeria*, para. 8.7.

¹⁶ See *Mezine v. Algeria*, para. 8.9; *Khirani v. Algeria*, para. 7.9; *Berzig v. Algeria*, para. 8.9; communication No. 1780/2008, *Zarzi v. Algeria*, Views adopted on 22 March 2011, para. 7.9; *Benaziza v. Algeria*, para. 9.8; *Atamna v. Algeria*, para. 7.8; and *Madoui v. Algeria*, para. 7.7.

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 Toufik Ammari's family contacted the competent authorities, including the public prosecutors at the courts of every *wilaya* in the region, regarding his disappearance, the State party failed to conduct a thorough and effective investigation into the disappearance of the author's son. Furthermore, the absence of the legal right to initiate judicial proceedings since the promulgation of Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation continues to deprive Toufik Ammari, the author and his family of any 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 disappearances.¹⁷ The Committee concludes that the facts before it reveal a violation of article 2 (para. 3), read in conjunction with articles 7, 9 and 16 of the Covenant, with regard to Toufik Ammari, and of article 2 (para. 3), read in conjunction with article 7 of the Covenant, with regard to the author.

9. 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 facts before it reveal violations by the State party of articles 7, 9 and 16, read alone and in conjunction with article 2 (para. 3) of the Covenant, with regard to Toufik Ammari. It also finds a violation of article 7, read alone and in conjunction with article 2 (para. 3) of the Covenant, with regard to the author.

10. 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 disappearance of Toufik Ammari and providing the author and his family with detailed information about the results of its investigation; (b) releasing Toufik Ammari immediately if he is still being detained incommunicado; (c) in the event that Toufik Ammari is deceased, handing over his remains to his family; (d) prosecuting, trying and punishing those responsible for the violations committed; (e) providing adequate compensation to the author for the moral and material damage suffered and to Toufik Ammari, if he is still alive; and (f) guaranteeing for the author and his family access to appropriate rehabilitation measures. 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.

11. 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 for 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.

¹⁷ CCPR/C/DZA/CO/3, para. 7.

Appendix

[Original: Spanish]

Individual (concurring) opinion of Fabián Omar Salvioli

1. I endorsed the decision in the *Ammari v. Algeria* case (communication No. 2098/2011), in which the Committee concludes that the State party bears international responsibility for violations of articles 7, 9 and 16 of the Covenant, and of article 2 (para. 3), read in conjunction with articles 7, 9 and 16, with regard to Toufik Ammari. I also agree with the finding of a violation of article 7 and of article 2 (para. 3), read in conjunction with article 7, with regard to Tahar Ammari.
2. I consider, however, that the Committee should have concluded that there has been a violation of article 6 of the Covenant with regard to Toufik Ammari, the victim of an enforced disappearance which has placed him and continues to place him in a situation of grave risk to his life. Consequently, and irrespective of whether or not the victim is still alive, the State party has not duly fulfilled its obligation to protect the right to life.
3. As I have indicated in my individual opinion in the *Benaziza v. Algeria* case, a finding of a violation of article 6 does not imply that the person concerned is dead. The Committee has been inconsistent in its treatment of cases of enforced disappearance. In some instances, it has found a violation of article 6, and in others it has remained silent on the subject, although the established facts were identical. I also discussed in my individual opinion the question of the obligation of States to guarantee rights and the relationship between enforced disappearance and article 6.^a
4. For a time, the Committee had interpreted the scope of article 6 of the Covenant restrictively and, in cases concerning enforced disappearance, it had found a violation of article 2, paragraph 3, read in conjunction with article 6. Starting with the *Djebbar and Chihoub* case (communication No. 1811/2008 adopted in October 2011), the Committee has taken a new position: it has found a direct violation of article 6 in cases of enforced disappearance; it has made it clear that such findings do not imply that it assumes the missing persons to be dead; and it has concluded that the State party must release the victims if they are still alive.^b
5. Although it has moved in the right direction, in most cases the Committee continues to take decisions based on the legal arguments of the parties and not on established facts. That has resulted in many inconsistencies and has led to cases in which identical established facts have been dealt with in different ways.
6. As I have pointed out, this inconsistent approach (which is more comparable to one used by a common law court than by an international human rights body), the Committee incomprehensibly limits its own powers.^c The task of every human rights body is to apply the law on the basis of the established facts. I have already shown that all international

^a See communication No. 1588/2007, *Benaziza v. Algeria*, Views adopted on 26 July 2010, individual opinion of Fabián Salvioli (partially dissenting), paras. 16 to 23.

^b Communication No. 1811/2008, *Djebbar and Chihoub v. Algeria*, Views adopted on 31 October 2011, para. 10.

^c See communication No. 1406/2005, *Weerawansa v. Sri Lanka*, Views adopted on 17 March 2009, individual opinion of Fabián Salvioli (partially dissenting), paras. 3 to 5.

bodies, jurisdictional or quasi-jurisdictional, work in this fashion and that since the parties have the opportunity to dispute the facts, there is no breach of a State's right of defence.^d

7. The Committee is unable to explain why sometimes it does not apply the law when States parties do not expressly invoke an article of the Covenant and sometimes it does.^e To cite merely a few examples from among many, in the following communications the Committee applied the law, irrespective of the legal arguments of the parties: No. 1390/2005, *Koreba v. Belarus*, Views adopted on 25 October 2010; No. 1225/2003, *Eshonov v. Uzbekistan*, Views adopted on 22 July 2010, paragraph 8.3; No. 1206/2003, *R.M. and S.I. v. Uzbekistan*, Views adopted on 10 March 2010, paragraphs 6.3 and 9.2 (non-violation); No. 1520/2006, *Mwamba v. Zambia*, Views adopted on 10 March 2010; No. 1320/2004, *Pimentel et al. v. Philippines*, Views adopted on 19 March 2007, paragraphs 3 and 8.3; No. 1177/2003, *Wenga and Shandwe v. Democratic Republic of the Congo*, Views adopted on 17 March 2006, paragraphs 5.5, 6.5 and 9; No. 973/2001, *Khalilova v. Tajikistan*, Views adopted on 30 March 2005, paragraph 3.7; and No. 1044/2002, *Shukurova v. Tajikistan*, Views adopted on 17 March 2006, paragraph 3.

8. It is to be hoped that in the future, the Committee will be consistent and that such consistency will reflect a better application of the International Covenant on Civil and Political Rights to the facts before it.

^d See *Benaziza v. Algeria*, individual opinion of Fabián Salvioli (partially dissenting), paras. 7 to 15.

^e See communications No. 1917/2009, No. 1918/2009, No. 1925/2009 and No. 1953/2010, *Prutina et al. v. Bosnia and Herzegovina*, Views adopted on 28 March 2013, individual opinion of Fabián Salvioli (partially dissenting), paras. 4 to 16.