



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/90/D/1327/2004
16 August 2007

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE
Ninetieth session
9-27 July 2007

VIEWS

Communication No. 1327/2004

Submitted by: Messaouda GRIOUA, née ATAMNA (represented by
counsel, Nassera Dutour)

Alleged victims: Mohamed GRIOUA (the author's son) and
Messaouda GRIOUA, née ATAMNA

State party: Algeria

Date of communication: 7 October 2004 (initial submission)

Document references: Special Rapporteur's rule 97 decision, transmitted to the
State party on 23 November 2004 (not issued in document
form)

Date of adoption of Views: 10 July 2007

Subject matter: Disappearance, detention incommunicado

Procedural issues: None

* Made public by decision of the Human Rights Committee.

Substantive issues: Prohibition of torture and cruel, inhuman and degrading treatment and punishment; right to liberty and security of person; arbitrary arrest and detention; respect for the inherent dignity of the human person; right to recognition before the law

Articles of the Covenant: 2, paragraph 3; 7; 9; 16

Articles of the Optional Protocol: 5, paragraph 2 (b)

On 20 July 2007, the Human Rights Committee adopted the annexed draft as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1327/2004.

[ANNEX]

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**

Ninetieth session

concerning

Communication No. 1327/2004**

Submitted by: Messaouda GRIOUA, née ATAMNA (represented by
counsel, Nassera Dutour)

Alleged victims: Mohamed GRIOUA (the author's son) and
Messaouda GRIOUA, née ATAMNA

State party: Algeria

Date of communication: 7 October 2004 (initial submission)

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

Meeting on 10 July 2007,

Having concluded its consideration of communication No. 1327/2004, submitted on
behalf of Mohamed GRIOUA (the author's son) and Messaouda GRIOUA, née ATAMNA
(the author) 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:

** The following members of the Committee participated in the examination of the
present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati,
Ms. Christine Chanet, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin,
Mr. Ahmed Tawfik Khalil, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc,
Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro,
Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication, dated 7 October 2004, is Ms. Messaouda GRIOUA, née ATAMNA, an Algerian national, who is acting on her own behalf and on behalf of her son, Mohamed GRIOUA, also an Algerian national, born on 17 October 1966. The author claims that her son is a victim of violations by Algeria of article 2, paragraph 3, and articles 7, 9 and 16 of the International Covenant on Civil and Political Rights and that she herself is a victim of violations by Algeria of articles 2, paragraph 3, and 7 of the Covenant. She is represented by counsel, Nassera Dutour, spokesperson for the Collectif des Familles de Disparu(e)s en Algérie. The Covenant and its Optional Protocol entered into force for the State party on 12 December 1989.

1.2 On 11 July and 23 August 2005, counsel requested interim measures relating to the State party's draft *Charte pour la Paix et la Réconciliation Nationale*, which was submitted to a referendum on 29 September 2005. In counsel's view, the draft law was likely to cause irreparable harm to the victims of disappearances, putting at risk those persons who were still missing, and to deprive victims of an effective remedy and render the views of the Human Rights Committee ineffective. Counsel therefore requested that the Committee invite the State party to suspend its referendum until the Committee had issued views in three cases (including the *Grioua* case). The request for interim measures was transmitted to the State party on 27 July 2005 for comment. There was no reply.

1.3 On 23 September 2005, the Special Rapporteur on new communications and interim measures requested the State party not to invoke, against individuals who had submitted or might submit communications to the Committee, the provisions of the law affirming "that no one, in Algeria or abroad, has the right to use or make use of the wounds caused by the national tragedy in order to undermine the institutions of the People's Democratic Republic of Algeria, weaken the State, impugn the integrity of all the agents who served it with dignity, or tarnish the image of Algeria abroad", and rejecting "all allegations holding the State responsible for deliberate disappearances. They [the Algerian people] consider that reprehensible acts on the part of agents of the State, which have been punished by law whenever they have been proved, cannot be used as a pretext to discredit the security forces as a whole, who were doing their duty for their country with the support of the general public".

The facts as presented by the author

2.1 The author states that, between 5.30 a.m. and 2 p.m. on 16 May 1996, uniformed men and official vehicles of the "joint forces" (police, gendarmerie and Army) surrounded El Merdja, a large district of Baraki, in the eastern suburbs of Algiers, and conducted an extensive search operation which led to the arrest of some 10 people. At 8 a.m., several members of the National People's Army in paratrooper uniforms came to the Grioua family's door. They entered and searched the house from top to bottom without a warrant. Finding nothing, the soldiers arrested

the author's son in the presence of the family and informed his parents, of whom the author is one, that their son was being detained to help with inquiries; they produced no legal summons or arrest warrant.

2.2 The author states that she ran after the soldiers who had taken her son away and followed them to the house of her neighbours, the Chihoubs. There she saw the soldiers arrest Djamel Chihoub, whom they also took away, together with her son. She then saw the soldiers go to the home of the Boufertella family and arrest their son, Fouad Boufertella. Finally, the soldiers (and their three prisoners) entered the Kimouche family's house and again arrested the son, Mourad Kimouche. The author provides several statements by individuals who have officially declared that they witnessed the events of 16 May 1996 and saw the author's son being arrested at his home by soldiers and taken away in army vehicles. The author maintains that these statements confirm the circumstances surrounding her son's arrest.

2.3 The soldiers handcuffed the prisoners in pairs and at 11 a.m. took them in a service vehicle to the Ibn Taymia school at the entrance to the Baraki district, which had been requisitioned as command headquarters. All those arrested that day were taken to the Ibn Taymia school, where the joint forces proceeded to carry out identity checks. Some were released immediately, while others were taken to the Baraki gendarmerie, the Baraki military barracks or the Les Eucalyptus police station, in a district not far from Baraki.

2.4 The author says she began searching at 10 a.m. the same day, going first to the Baraki gendarmerie. The gendarmes told her that the people she had seen arrested and had herself identified had not been taken there. They advised her to try the Baraki police station, but there she was told by the officers that they had not arrested anyone and she should go to the Baraki barracks, where her son would be. At the Baraki military barracks the soldiers advised her to try the police station instead, but when she returned to the police station the police officers again told her her son was definitely at the barracks and the soldiers had been lying. The author continued to search until nightfall.

2.5 The next day, 17 May 1996, the author resumed her search and the gendarmes, police and military again sent her from pillar to post. From that day on, the author has not ceased in her efforts to locate her son. She has been to the barracks several times and each time has met with the same vague responses from the soldiers. She has constantly come up against the silence of the authorities, who refuse to give her any information on her son's detention.

2.6 On the day of the raid, Fouad Boufertella was released at around 7 p.m. with injuries to one eye and a foot. He told the author that he had been released from the Baraki barracks, saying that the author's son and the others arrested at the same time (Mourad Kimouche and Djamel Chihoub) had been held with him. He said that he and they had each been tortured, one by one, for 10 minutes. He said he had seen Djamel Chihoub being given electric shocks and had heard the torturers saying they would wait until that night to torture the author's son.

2.7 The author states that she lodged several complaints with various courts, the first barely a month after her son's disappearance.¹ Most were never acted upon.² The case was dismissed by the El Harrach Court on jurisdictional grounds on 29 October 1996 and the Algiers Court prosecutor replied on 21 January 1997, saying "I regret to inform you that inquiries into your son's whereabouts have proved fruitless, but if we locate him we will inform you forthwith." The examining magistrate at the El Harrach Court dismissed proceedings in the Grioua cases (Nos. 586/97 and 245/97)³ on 23 November 1997. Case No. 836/98 was transferred to the Algiers Court on 4 April 1998; lastly, in case No. 854/99, the examining magistrate at the El Harrach Court dismissed the proceedings on 28 June 1999, a decision against which the author lodged an appeal with the Algiers Appeal Court on 18 July 1999. The Indictments Division of the Algiers Court, with which the appeal was lodged, rejected the author's petition on procedural grounds⁴ in a decision dated 17 August 1999. On 4 September 1999, again in relation to case No. 854/99, the author submitted an appeal in cassation within the legal time limits, but this was not forwarded to the Cassation Department of the Algiers Court until 20 July 2002, and to the Supreme Court of Algiers on 4 August 2002. The Supreme Court has still not handed down a judgement.

2.8 On the question of domestic remedies, the author recalls the Committee's case law, which holds that only effective and available remedies need to be exhausted; she submits that, in the case under consideration, since it was her son's fundamental rights that were violated, only remedies of a judicial nature need to be exhausted.⁵ She draws attention to the excessive delay

¹ Complaint No. 849/96 dated 24 June 1996, lodged with the State prosecutor at the El Harrach Court; complaint No. 2202/96 dated 10 August 1996, lodged with the prosecutor at the Algiers Court; complaint referred on 28 August 1996 to the court prosecutor at Bir Mourad Rais, on 21 October 1996 to the court prosecutor at El Harrach and on 2 July 1997 to the Baraki gendarmerie; a new complaint dated 30 December 1996 lodged with the State prosecutor at the El Harrach Court; complaint dated 1 April 1998 lodged with the prosecutor at the Algiers Court; complaint dated 2 August 1999 lodged with the prosecutor at the Blida military court; complaint dated 2 January 2001 lodged with the State prosecutor at the El Harrach Court.

² Counsel provides copies of several summonses instructing members of the Grioua family to go to the Baraki gendarmerie (5 February 1997, 21 February 1997, 10 May 1998, 9 July 1998), the Algiers *wilaya* offices (22 June 1997), the Baraki police station (7 November 1997), the El Harrach Court (12 November 1997, 24 May 1999) and the Algiers prosecutor's office (date illegible).

³ Notification recorded 31 November 1997.

⁴ Under articles 170-174 ff. of the Code of Criminal Procedure.

⁵ Counsel cites communications Nos. 147/1983, *Lucia Arzuada Gilboa v. Uruguay*, Views adopted on 1 November 1985; 563/1993, *Bautista de Arellana v. Colombia*, Views adopted on 27 October 1995; 612/1995, *José Vicenté et al. v. Colombia*, Views adopted on 29 July 1997; and 778/1997, *Coronel et al. v. Colombia*, Views adopted on 24 October 2002.

(nearly three years) between the submission of her appeal in cassation and its referral to the Algiers Supreme Court. During that time, on 21 May 2000, the author sent a telegram to the Supreme Court asking how the case was progressing. Her appeal is still before the Supreme Court, its tardy referral having greatly delayed its consideration and put back the date of any decision indefinitely. In view of the delay incurred in the judicial proceedings, counsel argues that these have been “unreasonably prolonged” within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, and that the requirement to exhaust domestic remedies no longer applies for the purposes of the Committee’s consideration of the case of the author’s son. Furthermore, every procedure initiated by the author in the past eight years has proved futile. The Algerian courts, notwithstanding the copious evidence in the file on the disappearance of the author’s son and the existence of corroborating testimony from several witnesses, have not exercised due diligence in ascertaining the fate of the author’s son or in identifying, arresting and bringing to trial those responsible for his abduction. Under the circumstances, the available domestic remedies of a judicial nature should be deemed exhausted.

2.9 On the question of administrative remedies, a review of the procedures undertaken shows that the State party has no desire to assist families in their inquiries, and highlights the many inconsistencies often to be found in the various State authorities’ handling of disappearance cases. The author has sent complaints by registered mail with recorded delivery to the State authorities at the highest level:⁶ the President, the Prime Minister, the Minister of Justice, the Minister of the Interior, the Minister of Defence, the Ombudsman, the President of the National Observatory for Human Rights and subsequently the President of the National Advisory Commission for the Promotion and Protection of Human Rights, which replaced the Observatory in 2001. The Observatory replied to the author on three occasions. On 17 September 1997, it wrote: “Following steps taken by the Observatory and according to information received from Police Headquarters, the individual in question faces proceedings under detention warrant No. 996/96 issued by the examining magistrate.” On 27 January 1999, the Observatory informed her it had “duly contacted the relevant security services. We undertake to forward to you any new information from the inquiry that we may receive”. Lastly, on 5 June 1999, the Observatory confirmed that “following steps taken by the Observatory and on the basis of information received from the security services, we can confirm that the individual in question is wanted by these services and is the subject of arrest warrant No. 996/96 issued by the El Harrach Court, which has territorial jurisdiction”. Yet the only military and judicial authorities in a position to provide the Observatory with such information have never acknowledged that the author’s son faced judicial proceedings. The file on the disappearance was lodged with the Office for Families of the Disappeared on 11 November 1998.

2.10 The author states that the case was submitted to the United Nations Working Group on Enforced or Involuntary Disappearances on 19 October 1998, but counsel refers to the Committee’s case law, which holds that “extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Economic and Social Council, and

⁶ Counsel provides copies of letters, in Arabic, with proof of delivery.

whose mandates are to examine and publicly report on human rights situations in specific countries or territories or on major phenomena of human rights violations worldwide, do not, as the State party should be aware, constitute a procedure of international investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol".⁷ Lastly, counsel emphasizes that the case of the author's son is not unique in Algeria. More than 7,000 families are searching for relatives who have disappeared, chiefly from police, gendarmerie and Algerian Army premises. No serious inquiry has been conducted to establish who was guilty of these disappearances. To this day, most of the perpetrators known to and identified by witnesses or family members enjoy complete impunity, and all administrative and judicial remedies have proved futile.

The complaint

3.1 The author claims that the facts as presented reveal violations of article 2, paragraph 3, and article 7, in respect of herself and her son, and of article 2, paragraph 3, and articles 9 and 16 of the Covenant in respect of her son.

3.2 As to the claims under article 7 in respect of the author's son, the circumstances of his disappearance and the total secrecy surrounding his highly probable detention are factors recognized by the Commission on Human Rights as constituting in themselves a form of inhuman or degrading treatment. The Committee has also accepted that being subjected to forced disappearance may be regarded as inhuman or degrading treatment of the victim.⁸ The author pursues her search every day, despite her age (65) and the difficulty she has in moving around. She suffers deeply from the constant uncertainty over her son's fate. This uncertainty and the authorities' refusal to divulge any information is a cause of profound and continuing anguish. The Committee has recognized that the disappearance of a close relative constitutes a violation of article 7 of the Covenant in respect of the family.⁹

3.3 As to article 9, the author's son was arrested on 16 May 1996 and his family has not seen him since. No legal grounds were given for his arrest and his detention was not entered in the police custody registers. Officially, there is no trace of his whereabouts or his fate. The fact that his detention has not been acknowledged and was carried out in complete disregard of the

⁷ Communication No. 540/1993, *Celis Lauréano v. Peru*, Views adopted on 25 March 1996, para. 7 (1).

⁸ Counsel cites communications Nos. 449/1991, *Mójica v. Dominican Republic*, Views adopted on 10 August 1994; 540/1993, *Celis Lauréano v. Peru*, Views adopted on 25 March 1996; 542/1993, *Tshishimbi v. Zaire*, Views adopted on 25 March 1996.

⁹ Counsel cites communication No. 107/1981, *Elena Quinteros Almeida v. Uruguay*, Views adopted on 21 July 1983, and the Committee's concluding observations on Algeria in 1998 (CCPR/C/79/Add.95, 18 August 1998, para. 10).

guarantees set forth in article 9, that the investigations have displayed none of the efficiency or effectiveness required in such circumstances, and that the authorities persist in concealing what has happened to him, means that he has been arbitrarily deprived of his liberty and the protection afforded by the guarantees specified in article 9. According to the Committee's case law, the unacknowledged detention of any individual constitutes a violation of article 9 of the Covenant.¹⁰ Under the circumstances, the violation of article 9 is sufficiently serious for the authorities to be required to account for it.

3.4 Article 16 establishes the right of everyone to be recognized as the subject of rights and obligations. Forced disappearance is essentially a denial of that right insofar as a refusal by the perpetrators to disclose the fate or whereabouts of the person concerned or to acknowledge the deprivation of liberty places that person outside the protection of the law.¹¹ Furthermore, in its concluding observations on the State party's second periodic report, the Committee recognized that forced disappearances might involve the right guaranteed under article 16 of the Covenant.¹²

3.5 With regard to article 2, paragraph 3, of the Covenant, the detention of the author's son has not been acknowledged and he is thus deprived of his legitimate right to an effective remedy against his arbitrary detention. For her part, the author has sought every remedy at her disposal, but has constantly run up against the authorities' refusal to acknowledge her son's arrest and detention. The State party had an obligation to guarantee her son's rights, and its denial that the security services were involved in his forced disappearance cannot be considered an acceptable and sufficient response to resolve the case of the author's son's forced disappearance. In addition, according to the Committee's general comment No. 31, the positive obligations on States parties, under paragraph 3, to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights. There may be circumstances in which a failure to ensure Covenant rights as

¹⁰ Counsel cites communications Nos. 612/1995, *José Vicenté et al. v. Colombia*, Views adopted on 29 July 1997; 542/1993, *Tshishimbi v. Zaire*, Views adopted on 25 March 1996; 540/1993, *Celis Lauréano v. Peru*, Views adopted on 25 March 1996; 563/1993, *Bautista de Arellana v. Colombia*, Views adopted on 27 October 1995; 181/1984, *Sanjuan Arévalo v. Colombia*, Views adopted on 3 November 1989; 139/1983, *Conteris v. Uruguay*, Views adopted on 17 July 1985; and 56/1979, *Celiberti de Casariego v. Uruguay*, Views adopted on 29 July 1981.

¹¹ Counsel cites the third preambular paragraph of the Declaration on the Protection of All Persons from Enforced Disappearance, General Assembly resolution 47/133 of 18 December 1992 (A/RES/47/133).

¹² CCPR/C/79/Add.95, para. 10.

required by article 2 would give rise to violations, as a result of States parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent or punish such acts by private persons.

3.6 The author asks the Committee to find that the State party has violated article 2, paragraph 3, and articles 7, 9 and 16 of the Covenant and to request the State party to order independent investigations as a matter of urgency with a view to locating her son, to bring the perpetrators of the forced disappearance before the competent civil authorities for prosecution, and to provide adequate reparation.

State party's observations on the admissibility and merits of the communication

4.1 On 28 August 2005, the State party reported that inquiries by the clerk of the Supreme Court had not succeeded in locating the Grioua file. The State party therefore requested further details, including the number of the receipt issued upon deposition of the file with the Supreme Court. Considering the large number of cases before the Court, more specific information would help shed light on the case in question.

4.2 By note verbale dated 9 January 2006, the State party reported that the Grioua case had been brought to the police's attention by a complaint from Mohamed Grioua's brother Saad, alleging abduction on 16 May 1996 "by persons unknown". Charges of abduction, a punishable offence under article 291 of the Criminal Code, were filed by the prosecutor at El Harrach (Algiers) with the examining magistrate of the third division. Several months of inquiries having failed to identify the perpetrator of the alleged abduction, the examining magistrate decided on 23 November 1997 to dismiss the proceedings. An appeal was lodged with the Indictments Division of the Algiers Court, which in a ruling dated 17 August 1999 rejected it on procedural grounds as failing to comply with the provisions of the Code of Criminal Procedure governing appeals against decisions of examining magistrates. Upon appeal in cassation, the Supreme Court handed down a judgement rejecting the application.

Author's comments on the State party's observations

5. On 24 February 2006, counsel argued that the State party was merely recapitulating the judicial procedure, not responding on the merits to either deny or accept responsibility for the forced disappearance of the author's son. According to the Committee's case law, the State party must furnish evidence if it seeks to refute claims made by the author of a communication: it is no use the State party merely denying them, whether explicitly or implicitly.¹³ In terms of procedure, counsel pointed out that all relevant effective remedies had been exhausted and drew attention to the time that had elapsed between the submission of the author's appeal and its referral to the Supreme Court.

¹³ Counsel cites communication No. 107/1981, *Elena Quinteros Almeida v. Uruguay*, Views adopted on 21 July 1983.

Issues and proceedings before the Committee

Admissibility considerations

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

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

6.3 With regard to exhaustion of domestic remedies, the Committee notes that the State party makes no comment on the admissibility of the communication. It notes that the author states that since 1996 she has lodged numerous complaints, the outcome of which was a dismissal of proceedings, upheld on appeal despite, the author says, the copious evidence in the file on her son's disappearance and the existence of corroborating testimony from several witnesses. The Committee also considers that the application of domestic remedies in response to the other complaints introduced repeatedly and persistently by the author since 1996 has been unduly prolonged. It therefore considers that the author has met the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

6.4 As to the claims under articles 7 and 9 of the Covenant, the Committee notes that the author has made detailed allegations about her son's disappearance and the ill-treatment he allegedly suffered. The State party has not replied to these allegations. In this case, the Committee takes the view that the facts described by the author are sufficient to substantiate the complaints under articles 7 and 9 for the purposes of admissibility. As to the claim under article 2, paragraph 3, the Committee considers that this allegation has also been sufficiently substantiated for the purposes of admissibility.

6.5 As regards the claims under article 16, the Committee considers that the question of whether and under what circumstances a forced disappearance may amount to denying recognition of the victim of such acts as a person before the law is intimately linked to the facts of this case. Therefore, it concludes that such claims are most appropriately dealt with at the merits stage of the communication.

6.6 The Committee concludes that the communication is admissible under article 2, paragraph 3, and articles 7, 9 and 16 of the Covenant, and proceeds to their consideration on the merits.

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, in accordance with article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee recalls the definition of enforced disappearance in article 7, paragraph 2 (i), of the Rome Statute of the International Criminal Court: “Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.” Any act leading to such disappearance constitutes a violation of many of the rights enshrined in the Covenant, including the right to liberty and security of the person (art. 9), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (art. 7), and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (art. 10). It also violates or constitutes a grave threat to the right to life (art. 6).¹⁴ In the present case, the author invokes articles 7, 9 and 16.

7.3 With regard to the author’s claim of disappearance, the Committee notes that the author and the State party have submitted different versions of the events in question. The author contends that her son was arrested on 16 May 1996 by agents of the State and has been missing since that date, while according to the National Observatory for Human Rights her son is wanted under arrest warrant No. 996/96 issued by the El Harrach Court. The Committee notes the State party’s indication that the examining magistrate considered the charge of abduction and, following investigations that failed to establish the identity of the perpetrator of the alleged abduction, decided to dismiss proceedings.

7.4 The Committee reaffirms¹⁵ that the burden of proof cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to the evidence and frequently the State party alone has the relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol that 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 furnish to the Committee the information available to it. In cases where the allegations are corroborated by credible evidence submitted by the author and where further clarification depends on information exclusively in the hands of the State party, the Committee considers the author’s allegations sufficiently substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party. In the present

¹⁴ See communication No. 950/2000, *Sarma v. Sri Lanka*, Views adopted on 31 July 2003, para. 9.3.

¹⁵ Communications Nos. 146/1983, *Baboeram Adhin et al. v. Suriname*, Views adopted on 4 April 1985, para. 14.2; 139/1983, *Conteris v. Uruguay*, Views adopted on 17 July 1985, para. 7.2; 202/1986, *Graciela Ato del Avellanal v. Peru*, Views adopted on 31 October 1988, para. 9.2; 30/1978, *Bleier v. Uruguay*, Views adopted on 29 March 1982, para. 13.3; 107/1981, *Elena Quinteros Almeida v. Uruguay*, Views adopted on 21 July 1983, para. 11; and 992/2001, *Bousroual v. Algeria*, Views adopted on 30 March 2006, para. 9.4.

case, the Committee has been provided with statements from witnesses who were present when the author's son was arrested by agents of the State party. Counsel has informed the Committee that one of those detained at the same time as the author's son, held with him and later released, has testified concerning their detention and the treatment to which they were subjected.

7.5 As to the alleged violation of article 9, the information before the Committee reveals that the author's son was removed from his home by agents of the State. The State party has not addressed the author's claims that her son's arrest and detention were arbitrary or illegal, or that he has not been seen since 16 May 1996. Under these circumstances, due weight must be given to the information provided by the author. The Committee recalls that detention *incommunicado* as such may violate article 9,¹⁶ and notes the author's claim that her son was arrested and has been held *incommunicado* since 16 May 1996, without any possibility of access to a lawyer, or of challenging the lawfulness of his detention. In the absence of adequate explanations on this point from the State party, the Committee concludes that article 9 has been violated.

7.6 As to the alleged violation of article 7 of the Covenant, 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, on article 7, which recommends that States parties should make provision against detention *incommunicado*. In the circumstances, the Committee concludes that the disappearance of the author's son, preventing him from contacting his family and the outside world, constitutes a violation of article 7 of the Covenant.¹⁷ Further, the circumstances surrounding the disappearance of the author's son and the testimony that he was tortured strongly suggest that he was so treated. The Committee has received nothing from the State party to dispel or counter such an inference. The Committee concludes that the treatment of the author's son amounts to a violation of article 7.¹⁸

7.7 The Committee also notes the anguish and distress caused to the author by her son's disappearance and her continued uncertainty as to his fate. It is therefore of the opinion that the facts before it reveal a violation of article 7 of the Covenant with regard to the author herself.¹⁹

¹⁶ Communication No. 1128/2002, *Rafael Marques de Morais v. Angola*, Views adopted on 29 March 2005, para. 6.3. See also general comment No. 8, para. 2.

¹⁷ Communications Nos. 540/1993, *Celis Laureano v. Peru*, Views adopted on 25 March 1996, para. 8.5; 458/1991, *Mukong v. Cameroon*, Views adopted on 24 July 1994, para. 9.4; and 440/1990, *El-Megreisi v. Libyan Arab Jamahiriya*, Views adopted on 23 March 1994, para. 5.

¹⁸ Communications Nos. 449/1991, *Mójica v. Dominican Republic*, Views adopted on 10 August 1994, para. 5.7; and 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 9.6.

¹⁹ Communications Nos. 107/1981, *Elena Quinteros Almeida v. Uruguay*, Views adopted on 21 July 1983, para. 14; and 950/2000, *Sarma v. Sri Lanka*, Views adopted on 31 July 2003, para. 9.5.

7.8 As to the alleged violation of article 16 of the Covenant, the question arises as to whether and under what circumstances a forced disappearance may amount to denying the victim recognition as a person before the law. The Committee points out that intentionally removing a person from the protection of the law for a prolonged period of time may constitute a refusal to recognize that person before the law if the victim was in the hands of the State authorities when last seen and, at the same time, 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. In such situations, disappeared persons are in practice deprived of their capacity to exercise entitlements under law, including all their other rights under the Covenant, and of access to any possible remedy as a direct consequence of the actions of the State, which must be interpreted as a refusal to recognize such victims as persons before the law. The Committee notes that, under article 1, paragraph 2, of the Declaration on the Protection of All Persons from Enforced Disappearance,²⁰ enforced disappearance constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law. It also recalls that article 7, paragraph 2 (i), of the Rome Statute of the International Criminal Court, recognizes that the “intention of removing [persons] from the protection of the law for a prolonged period of time” is an essential element in the definition of enforced disappearance. Lastly, article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance mentions that enforced disappearance places the person concerned outside the protection of the law.

7.9 In the present case, the author indicates that her son was arrested together with other individuals by members of the National People’s Army on 16 May 1996. After an identity check, he was allegedly taken to the Baraki military barracks. There has been no news of him since that date. The Committee notes that the State party has neither contested these facts nor conducted an investigation into the fate of the author’s son, nor provided the author with any effective remedy. It is of the view that if a person is arrested by the authorities and there is subsequently no news of that person’s fate, the failure by the authorities to conduct an investigation effectively places the disappeared person outside the protection of the law. Consequently, the Committee concludes that the facts before it in the present communication reveal a violation of article 16 of the Covenant.

7.10 The author has invoked article 2, paragraph 3, of the Covenant, which requires States parties to ensure that individuals have accessible, effective and enforceable remedies to uphold these rights. The Committee attaches importance to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing alleged violations of rights under domestic law. It refers to its general comment No. 31,²¹ which states that 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, the information before it indicates that neither the author nor her son have had access to an effective remedy, and the Committee concludes that the facts

²⁰ See General Assembly resolution 47/133 of 18 December 1992.

²¹ Paragraph 15.

before it reveal a violation of article 2, paragraph 3, of the Covenant, in conjunction with articles 7, 9 and 16, in respect of the author's son, and a violation of article 2, paragraph 3, of the Covenant, in conjunction with article 7 of the Covenant, in respect of the author herself.

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 facts before it reveal violations by the State party of articles 7, 9 and 16 of the Covenant, and of article 2, paragraph 3, in conjunction with articles 7, 9 and 16, in respect of the author's son, and of article 7 and article 2, paragraph 3, in conjunction with article 7, in respect of the author herself.

9. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including a thorough and effective investigation into the disappearance and fate of her son, his immediate release if he is still alive, and the appropriate information emerging from its investigation, and to ensure that the author and her family receive adequate reparation, including in the form of compensation. While the Covenant does not give individuals the right to demand the criminal prosecution of another person,²² the Committee nevertheless considers the State party duty-bound not only to conduct thorough investigations into alleged violations of human rights, particularly enforced disappearances and violations of the right to life, but also to prosecute, try and punish the culprits. Thus, the State party is therefore also under an obligation to prosecute, try and punish those held responsible for such violations. The State party is further required to take measures to prevent similar violations in the future. The Committee also recalls the request made by the Special Rapporteur on new communications and interim measures dated 23 September 2005 (see paragraph 1.3 above) and reiterates that the State party should not invoke the *Charte pour la Paix et la Réconciliation Nationale* against individuals who invoke the provisions of the Covenant or have submitted or may submit communications to the Committee.

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 there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, that State party has undertaken to ensure all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy where a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

²² Communications Nos. 213/1986, *H.C.M.A. v. The Netherlands*, Views adopted on 30 March 1989, para. 11.6; and 612/1995, *José Vicenté et al. v. Colombia*, Views adopted on 29 July 1997, para. 8.8.