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HUMAN RIGHTS COMMITTEE
Ninetieth session
9-27 July 2007

VIEWS

Communication No. 1328/2004

Submitted by:	Messaouda Kimouche, née Cheraitia, and Mokhtar Kimouche (represented by counsel, Nassera Dutour)
Alleged victims:	Mourad Kimouche (the authors' son), Messaouda Kimouche, née Cheraitia, and Mokhtar Kimouche
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 25 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.

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Substantive issues:	Prohibition of torture and cruel, inhuman or degrading treatment or 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
Article of the Optional Protocol:	5, paragraph 2 (b)

On 10 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. 1328/2004.

[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. 1328/2004**

Submitted by:	Messaouda Kimouche, née Cheraitia, and Mokhtar Kimouche (represented by counsel, Nassera Dutour)
Alleged victims:	Mourad Kimouche (the authors' son), Messaouda Kimouche, née Cheraitia, and Mokhtar Kimouche
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. 1328/2004, submitted on behalf of Mourad Kimouche (the authors' son), Messaouda Kimouche, née Cheraitia, and Mokhtar Kimouche (the authors) 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 authors 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. 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 authors of the communication, dated 7 October 2004, are Messaouda Kimouche, née Cheraitia, and Mokhtar Kimouche, Algerian nationals, who are acting on their own behalf and on behalf of their son Mourad Kimouche, also an Algerian national, born on 21 December 1973. The authors claim that their 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 they themselves are victims of violations by Algeria of articles 2, paragraph 3, and 7 of the Covenant. They are 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 present 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 authors

2.1 The authors state 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 about 8 a.m., several members of the National People's Army in paratrooper uniforms came to the door of the Kimouche family's house. They did not conduct a search but arrested Mourad Kimouche, saying that he was being detained to help with inquiries, and took him away with three other young men they had already arrested: Mohamed Grioua, Djamel Chihoub and Fouad Boufertella.

2.2 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.

2.3 The authors began searching at 11 a.m. the same day. Among the officers directing the operation, Ms. Kimouche had recognized Captain Betka from the Baraki military barracks. Accordingly, the authors went to the Baraki barracks and were shown to the office where the identity papers for those arrested that morning were being kept. The soldiers told them their son was not at the barracks. When they went to the barracks a second time, at 2 p.m., a soldier told them, after they had given him a full description of what their son was wearing, that he had in fact been one of those brought in that morning and that he had been transferred with a number of others to the Châteauneuf prison.

2.4 On the same day, Fouad Boufertella was released at around 7 p.m. with injuries to one eye and a foot. He testified that he had been released from the Baraki barracks and stated that the authors' son and the others arrested at the same time (Mohamed Grioua and Djamel Chihoub) had been held with him. He said that he and they had each been tortured in turn 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 Mohamed Grioua.

2.5 Some two weeks after her son was abducted, Ms. Kimouche learnt from police officers that he was in Châteauneuf prison, a fact not denied by Captain Betka when questioned by the authors. Ms. Kimouche attempted to see her son at Châteauneuf, without success. According to information received, Mourad appears to have been held in Châteauneuf prison for about 22 days. Two and a half months after the abduction, Ms. Kimouche's uncle, Amar Mezanar, said he saw the authors' son being brought before the magistrate at the El Harrach Court; an examining magistrate denied this the next day when questioned by Mr. Kimouche. The examining magistrate asked Mr. Kimouche to write to him giving details of his son's disappearance. The letter was subsequently sent to the Algiers Appeal Court, where the examining magistrate reported that, according to the central police station, Mourad Kimouche was not wanted and was not accused of terrorism.

2.6 Three months later, the authors learnt from a relative that Mourad Kimouche had been transferred to El Harrach prison, where the relative had seen him. Six months after that, Mr. Merabet, one of the authors' neighbours, recognized Mourad Kimouche and Djamel Chihoub in the Ben Aknoun (military) prison while he was looking for his own son, who had disappeared six months after Mourad Kimouche. According to further information obtained from a confidential source, Mourad was again transferred from the Ben Aknoun prison to the Beni Messous (military) detention centre. Some years later, an army colonel whose identity has not been revealed identified Mourad Kimouche from his identity photograph and told the authors he had been a prisoner at Reggane for two or three years.

2.7 Since 16 May 1996, the authors have not ceased in their efforts to find their son. They have launched a number of complaints, starting with one dated 18 June 1996 to the prosecutor at the El Harrach Court, and have been summoned to appear before the authorities on several occasions. Mr. Kimouche wrote to the prosecutor at the Bir Mourad Rais Court on 23 June 1996, and on 24 August 1997 lodged another complaint with the Blida military court, which was referred to the competent El Harrach Court. The examining magistrate at the El Harrach Court

who was assigned the file decided on 30 May 1999 to dismiss proceedings in cases Nos. 166/99 and 60/99, a ruling that was appealed on 30 June 1999 by the prosecutor of El Harrach before the Public Prosecutor of the Algiers Appeal Court, on the grounds that the examining magistrate's investigation had been insufficiently thorough. The Algiers Appeal Court handed down a ruling on 13 July 1999 upholding the decision by the examining magistrate at El Harrach to dismiss proceedings in cases Nos. 687/99 and 732/99, despite submissions by the prosecutor's office in Algiers supporting the appeal. Mr. Kimouche then lodged an appeal in cassation on 8 August 1999 (application No. 1305, case No. 687/99). Despite a report from the Public Prosecutor of the Algiers Appeal Court supporting the application, the Criminal Division of the Algiers Supreme Court, in a judgement dated 25 July 2000 (decision No. 247023), upheld the trial court's position and confirmed the decision to dismiss proceedings. A further decision to dismiss proceedings in cases Nos. 103/100 and 43/00 was issued on 3 August 2004 by the examining magistrate at the El Harrach Court.

2.8 On the availability of domestic remedies, the authors recall the Committee's case law, which holds that only effective and available remedies need to be exhausted; they submit that, in the case under consideration, since it was their son's fundamental rights that were violated, only remedies of a judicial nature need to be exhausted. In this case, the authors have availed themselves of multiple judicial remedies, right up to the Supreme Court, all of which have ended in decisions to dismiss proceedings although the circumstances of Mourad Kimouche's disappearance are attested to by several witnesses who have never been given a hearing. Moreover, the complaints were brought against named individuals such as Captain Betka but were turned by the courts into complaints against a person or persons unknown. Counsel recalls that the Committee considers that "[a] State party has a duty to investigate thoroughly alleged violations of human rights, particularly enforced disappearances and violations of the right to life, and to criminally prosecute, try and punish those deemed responsible for such violations. This duty applies *a fortiori* in cases in which the perpetrators of such violations have been identified".[1]

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 to be found in the various State authorities' handling of disappearance cases. Several letters have been sent (on 10 August 1996, 23 October 1996 and 4 June 2000) to the National Observatory for Human Rights, which has replied to them all but provided no information about the place of detention or the fate of Mourad Kimouche, stating merely that he was not wanted by the security services or a suspect in any current case and there was no warrant for his arrest.

2.10 The authors state that the case has been submitted to the United Nations Working Group on Enforced or Involuntary Disappearances. Counsel emphasizes that the case of the authors' 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

[1] Communication No. 612/1995, *José Vicente et al. v. Colombia*, Views adopted on 29 July 1997, para. 8.8.

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 authors claim that the facts as presented reveal violations of article 2, paragraph 3, and article 7 in respect of the authors and their son, and of article 2, paragraph 3, and articles 9 and 16 of the Covenant in respect of their son.

3.2 As to the claims under article 7, in respect of Mourad Kimouche, being subjected to forced disappearance may be regarded as inhuman or degrading treatment of the victim. In respect of the authors, the disappearance of their son is a frustrating and painful ordeal inasmuch as they have no information whatsoever concerning his fate and the authorities have made no attempt to relieve their suffering by conducting effective inquiries. 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.

3.3 As to article 9, the authors' son was arrested on 16 May 1996 and was transferred to the Baraki barracks and then to the prison, but his detention has not been acknowledged by any authority. There is no official indication of his whereabouts or his fate, which means he has been arbitrarily detained in complete disregard of the guarantees set forth 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. 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 his or her liberty places that person outside the protection of the law. 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.[2] Mourad Kimouche has been in unacknowledged detention since 16 May 1996, in violation of his right to recognition as a person before the law and as the holder of protected rights.

3.5 With regard to article 2, paragraph 3, of the Covenant, Mourad Kimouche has suffered forced disappearance and has consequently been deprived of his legitimate right to an effective remedy against his arbitrary detention. The authors have sought every remedy at their disposal in order to find their son. The Committee has considered that "[a] State party has a duty to investigate thoroughly alleged violations of human rights, particularly enforced disappearances and violations of the right to life, and to criminally prosecute, try and punish those deemed

[2] CCPR/C/79/Add.95, para. 10.

responsible for such violations. This duty applies *a fortiori* in cases in which the perpetrators of such violations have been identified". No such measures have been taken by the authorities, in violation of article 2, paragraph 3, of the Covenant.

3.6 The authors ask 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 their 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

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 Kimouche 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 On 9 January 2006, the State party reported that the case relating to Mourad Kimouche's disappearance had opened with a complaint lodged in April 1999 by Mr. Kimouche concerning the abduction of his son in, he said, May 1996. On receipt of the complaint, a statement was taken from Mr. Kimouche at the gendarmerie station and forwarded to the prosecutor at El Harrach. The prosecutor filed charges of abduction, a punishable offence under article 291 of the Criminal Code, against a person or persons unknown on 12 April 1999. The case was dealt with by an examining magistrate of the El Harrach Court. After several months of inquiries which proved fruitless, the examining magistrate ordered a temporary stay of proceedings, meaning that the investigation may be reopened at any time if new information comes to light. This decision was appealed in the Indictments Division of the Algiers Court, which upheld the examining magistrate's decision. The Indictments Division ruling was appealed in cassation before the Supreme Court, which rejected the application. The case is not definitively closed inasmuch as the examining magistrate's decision was to order a temporary stay of proceedings, with the legal consequences already noted.

Authors' 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 authors' 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.[3] In terms of procedure, the State party appears to be suggesting that proceedings are still in progress, but counsel maintains that all effective remedies in the case have been exhausted: the authors have taken the

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

case to appeal in cassation, but all remedies have proved ineffective and futile. The possibility that the case might be reopened "if new information comes to light" has no bearing on whether the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met.

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 the State party's submission that the case is not definitively closed inasmuch as the judicial investigation may be reopened at any time if new information comes to light. On this point the Committee refers to the authors' statement that the decision to dismiss proceedings was upheld by the Supreme Court of Algiers on 25 July 2000 and that a further such decision has been handed down since then. The Committee also considers that the application of domestic remedies in response to the other complaints introduced repeatedly and persistently by the authors since 1996 has been unduly prolonged. It therefore considers that the authors have met the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

6.4 With regard to the complaints under articles 7 and 9 of the Covenant, the Committee notes that the authors have made detailed allegations about their son's disappearance and the ill-treatment their son has suffered. The State party has not replied to these allegations. In this case, the Committee takes the view that the facts described by the authors 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 With regard to the complaints under article 16, the Committee considers that the question of whether and in what circumstances an enforced disappearance may constitute a refusal to recognize the victim of such an act as a person before the law is closely related to the facts of this case. Consequently, it concludes that such complaints would be more appropriately dealt with when considering the merits of the communication.

6.6 The Committee concludes that the communication is admissible under articles 2, paragraph 3, and 7, 9 and 16 of the Covenant, and proceeds to its 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 provided for in 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).[4] In the present case, the authors invoke articles 7, 9 and 16.

7.3 With regard to the authors' claim of disappearance, the Committee notes that the authors and the State party have submitted different versions of the events in question. The authors contend that their son was arrested on 16 May 1996 by agents of the State - according to the latter, to help with inquiries - and has been missing since that date, while according to the National Observatory for Human Rights their son is not wanted by the security services and there is no warrant for his arrest. The Committee takes notes of 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, a decision that was upheld in cassation.

7.4 The Committee reaffirms[5] 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 that 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 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 an author's allegations sufficiently substantiated in the absence of satisfactory evidence and explanations to the contrary presented by the State party. In the present case, the Committee has been provided with statements from witnesses who were present when the authors' 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 authors' son, held with him and later released, has testified concerning their detention and the treatment to which they were subjected.

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

[5] See, inter alia, communications Nos. 146/1983 and 148-154/1983, *Baboeram Adhin et al. v. Suriname*, Views adopted on 4 April 1985, para. 14.2; and 992/2001, *Bousroual v. Algeria*, Views adopted on 30 March 2006, para. 9.4.

7.5 As to the alleged violation of article 9, the information available reveals that the authors' son was removed from his home by agents of the State. The State party has not addressed the authors' claims that their son's arrest and detention were arbitrary or illegal, and that he has not been seen since 16 May 1996. Under these circumstances, due weight must be given to the information provided by the authors. The Committee recalls that detention incommunicado as such may violate article 9[6] and notes the authors' claim that their 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 incommunicado detention. In the circumstances, the Committee concludes that the disappearance of Mourad Kimouche, preventing him from contacting his family and the outside world, constitutes a violation of article 7 of the Covenant.[7] Further, the circumstances surrounding the disappearance of the authors' 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 authors' son amounts to a violation of article 7.[8]

7.7 The Committee also notes the anguish and distress caused to the authors by their son's disappearance and their 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 authors themselves.[9]

7.8 As to the alleged violation of article 16 of the Covenant, the question arises of whether and in what circumstances an enforced disappearance may constitute a refusal to recognize the victim 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

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

[7] Communications Nos. 540/1993, *Celis Laureano v. Peru*, Views adopted on 25 March 1996, para. 8.5; and 458/1991, *Mukong v. Cameroon*, Views adopted on 24 July 1994, para. 9.4.

[8] 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.

[9] 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.

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,[10] 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 authors indicate that their 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 authors' son. 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 authors have 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,[11] 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 authors, nor their son, have had access to an effective remedy, and the Committee concludes that the facts 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 authors' son, and a violation of article 2, paragraph 3, of the Covenant, in conjunction with article 7, in respect of the authors themselves.

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

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[10] See General Assembly resolution 47/133 of 18 December 1992.

[11] Paragraph 15.

article 2, paragraph 3, in conjunction with articles 7, 9 and 16, in respect of the authors' son, and a violation of article 7 and of article 2, paragraph 3, in conjunction with article 7, in respect of the authors themselves.

9. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including a thorough and effective investigation into the disappearance and fate of their son, his immediate release if he is still alive, and the appropriate information emerging from its investigation, and to ensure that the authors and the 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,[12] 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 infringements of the right to life, but also to prosecute, try and punish the culprits. 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.]

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