



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3321/2019*, **

<i>Communication submitted by:</i>	Salah Drif and Khoukha Rafrat (represented by counsel, Nassera Dutour, of the Collectif des familles de disparu(e)s en Algérie)
<i>Alleged victims:</i>	The authors and Allal Drif (their son)
<i>State party:</i>	Algeria
<i>Date of communication:</i>	20 January 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 15 March 2019 (not issued in document form)
<i>Date of adoption of Views:</i>	8 July 2022
<i>Subject matter:</i>	Enforced disappearance
<i>Procedural issue:</i>	Exhaustion of local remedies
<i>Substantive issues:</i>	Right to an effective remedy; cruel, inhuman or degrading treatment or punishment; liberty and security of person; human dignity; recognition as a person before the law
<i>Articles of the Covenant:</i>	2 (2) and (3), 6, 7, 9, 10, 14 and 16
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2)

1. The authors of the communication are Salah Drif and his wife Khoukha Rafrat, both of Algerian nationality. They claim that their son, Allal Drif, born on 29 September 1966, also an Algerian national, is the victim of enforced disappearance attributable to the State party, in violation of articles 2 (2) and (3), 6, 7, 9, 10 and 16 of the Covenant. The authors further claim to be victims of a violation of their rights under articles 2 (2) and (3), 7 and 14 of the Covenant. Both the Covenant and the Optional Protocol thereto entered into force for the State party on 12 December 1989. The authors are (represented by counsel, Nassera Dutour, of the Collectif des familles de disparu(e)s en Algérie).

* Adopted by the Committee at its 135th session (27 June–27 July 2022).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Imeru Tamerat Yigezu and Gentian Zyberli.



The facts as presented by the authors

2.1 Allal Drif, who is single, was living with his family in Berbissa. On 29 January 1995, he left home at 1 p.m. to go to work. When he was a few metres from his family's home, an official gendarmerie vehicle drew up beside him and two armed gendarmes in uniform, accompanied by two members of the communal guard, who were also armed, apprehended him and drove him to the gendarmerie station in Berbissa in their vehicle. A witness of the scene recognized S., the chief of the gendarmerie brigade in Berbissa and the two other communal guards.

2.2 After being alerted to the incident, Khoukha Rafrat went to the gendarmerie station in Berbissa to enquire about her son's arrest. The gendarmes denied having arrested him, told her that her son was wanted by the law enforcement authorities and refused to give her any further information. She then began searching for her son in all the detention centres and barracks in the region. She sent letters to several national institutions in an attempt to discover the reasons for her son's arrest and disappearance, but to no avail. On 1 February 1995, a relative of the family, who used to work as a gardener at the Berbissa gendarmerie station, informed the authors that he had seen Allal while he was being detained at the gendarmerie premises and that it appeared to him that Allal was being mistreated. He also reported that Allal had been transferred a few days later to another detention centre. On 9 June 1995, his brother Omar Drif was also arrested by the gendarmes and taken to the Berbissa gendarmerie.¹

2.3 The authors contacted the competent administrative and judicial authorities to find out their son's fate and the reasons for his detention. With regard to the administrative authorities, Khoukha Rafrat first sent two letters (dated 28 and 31 August 1997) to the Ombudsman, who acknowledged their receipt on 15 October 1997 and informed her that the file had been forwarded to the competent services with a view to obtaining more information and that he would notify her of the response to her request. In 1997, Salah Drif received another letter from the Ombudsman, confirming that he had received his letter concerning his family members and stating that he would not fail to keep him informed of the outcome.

2.4 On 3 January 1998, Khoukha Rafrat wrote a letter to the Minister of Justice. By letter dated 25 August 1998, she was summoned to appear at the wilaya office on 28 October 1998 in connection with Allal's disappearance. On 24 August and 7 November 1998, the authors wrote two letters to the Minister of Justice. On 30 August 1999, Khoukha Rafrat sent a letter to the President, in which she expressed her fears for her remaining family members, demanded the truth and asked the authorities to genuinely search for her son. On 13 December 1999, Khoukha Rafrat and the relatives of several other disappeared persons signed a joint letter to the President. On 13 April 2003, Salah Drif again brought the matter to the attention of the President, the Head of Government, the Minister of Justice and the National Advisory Commission for the Promotion and Protection of Human Rights. On 27 August 2006, Khoukha Rafrat sent further letters to the President, the Head of Government, the Minister of Justice, the National Advisory Commission for the Promotion and Protection of Human Rights and the Minister of the Interior. She told the authorities that the steps she had been taking for 10 years to discover the whereabouts of her son had been fruitless.

2.5 On 7 September 2006, the authors received a reply from the Head of Government, acknowledging receipt of the earlier letter and saying that he had forwarded the request to the National Advisory Commission for the Promotion and Protection of Human Rights. On 27 December 2006, the authors received another reply from the Office of the President, inviting them to go to the court nearest to their home to take the requisite steps for obtaining compensation under Ordinance No. 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation. The authors categorically refused this compensation, which would have meant ending their efforts to discover the truth about their son's fate.

2.6 On 13 March 2007, the authors appealed to the Head of Government and the President. On 11 May 2009, they sent another complaint to the President, the Minister of Justice and the Minister of the Interior. On 12 June 2011, they again appealed to the President and the

¹ The case of Omar Drif has already been examined by the Committee, see *Drif and Rafrat v. Algeria* (CCPR/C/134/D/3320/2019).

Minister of Justice, requesting the State to enforce their right to an effective investigation to learn the reasons for their son's arrest and his true fate. In this letter, they referred to international instruments for the promotion and protection of human rights, including the Covenant and the African Charter on Human and Peoples' Rights. The authors did not receive a reply to these letters.

2.7 As for judicial remedies, on 17 November 1996, Salah Drif was summoned by the criminal investigation service of Tipaza in connection with the disappearance of his two sons. On 4 March 1999, Khoukha Rafrat received a summons from the military court of Blida to appear before it on 19 April 1999. During the interview, the soldiers confirmed that her son had been arrested by the gendarmerie brigade of Berbissa and had then been transferred, without giving her any further information. On an unspecified date, the authors contacted the public prosecutor at the Blida Military Court to inquire about the progress of the investigation. They also informed him that they had been heard by the gendarmerie at his request, but that they had not heard anything since then.

2.8 On 13 September 2004, given the authorities' inaction, Salah Drif lodged another complaint with the investigating judge at the court of Kolea against the two members of the communal guard who had arrested his son. However, no action was taken. On 27 August 2006, Khoukha Rafrat referred the matter to the public prosecutor of the court of Kolea. On 21 February 2007, she again requested the public prosecutor to open an investigation into her son's fate. No action was taken in response to any of her complaints. On 11 May 2009, the authors filed another complaint with the public prosecutor of the court of Kolea, once again requesting that an investigation be launched. They received two replies, one of which was to inform them that the file had been forwarded to the National Advisory Commission for the Promotion and Protection of Human Rights, but that this body was not competent to initiate an investigation. At that point, the authors again turned down the compensation and demanded to know the truth.

2.9 On 12 June 2011, Khoukha Rafrat referred the matter to the court of Kolea by lodging a complaint with the public prosecutor. On an unspecified date, the authors also appealed to the public prosecutor of the military court of Blida, explaining that they had filed a complaint with the civil court of Kolea, but that no action had as yet been taken on their case.²

2.10 Allal Drif's case was also submitted to the Working Group on Enforced or Involuntary Disappearances on 25 June 2009. Seven years after it was taken up by the Working Group, the Algerian authorities had still not shed light on the case.³

2.11 Despite the authors' best efforts, no investigation has been undertaken by the competent State authorities. The authors point out that it is now legally impossible for them to bring judicial proceedings after the issuance of Ordinance No. 06-01. Domestic remedies, which had already proved futile and ineffective, have thus become unavailable. Indeed, according to the Charter, "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 have done their duty for their country, with the support of its citizens".

2.12 The authors argue that, since Ordinance No. 06-01 prohibits recourse to judicial proceedings, on pain of criminal prosecution, victims are relieved of any obligation to exhaust domestic remedies. Article 45 of the Ordinance in fact prohibits any complaint of disappearance or other offences, by providing that "no individual or class action may be taken against members of any branch of the defence and security forces of the Republic for actions carried out to protect persons and property, safeguard the nation and preserve the institutions of the People's Democratic Republic of Algeria". By virtue of this provision, any allegation or complaint must be declared inadmissible by the competent legal authority. Furthermore, article 46 of the Ordinance establishes that:

Anyone who, through his or her spoken or written statements or any other act, uses or makes use of the wounds caused by the national tragedy to undermine the institutions

² See also *Drif and Rafrat v. Algeria* (CCPR/C/134/D/3320/2019), paras. 2.1–2.9.

³ The case is still pending before the Working Group on Enforced or Involuntary Disappearances.

of the People's Democratic Republic of Algeria, weaken the State, impugn the honour of its agents who have served it with dignity, or tarnish the image of Algeria abroad shall be liable to a term of imprisonment of 3 to 5 years and a fine of 250,000 to 500,000 Algerian dinars. Criminal proceedings shall be automatically initiated by the public prosecutor's office. The penalty established in the present article shall be doubled for repeat offences.

The complaint

3.1 The authors request the Committee to find that the State party has violated the rights of Allal Drif under articles 2 (2) and (3), 6, 7, 9, 10 and 16 of the Covenant and their own rights under articles 2 (2) and (3), 7 and 14 of the Covenant.

3.2 The authors claim that their son is a victim of enforced disappearance. They argue that, although no provision of the Covenant expressly mentions enforced disappearance, such practices involve violations of the right to life, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment and the right to liberty and security of person.

3.3 The authors refer to the developments in the Committee's jurisprudence regarding enforced disappearances and consider that the mere risk of loss of a person's life in the context of enforced disappearance is enough to justify a finding of a direct violation of article 6 of the Covenant. They also describe the facts surrounding their son's disappearance and consider that, since 21 years have elapsed and in the absence of any information, there are strong reasons to believe that he died in detention while he was in the care of the authorities. In the absence of a thorough investigation into the disappearance of Allal Drif, the authors consider that the State party has failed in its obligation to protect his right to life and to take steps to investigate what happened to him, in violation of article 6 (1) of the Covenant.

3.4 The authors recall the circumstances accompanying their son's disappearance, namely the total lack of information about his detention and his state of health and the lack of communication with his family and the outside world. They point out that prolonged arbitrary detention increases the risk of torture and cruel, inhuman or degrading treatment. The authors, relying on the Committee's jurisprudence, stress that the anguish, uncertainty and distress caused by Allal Drif's disappearance and by the fact that the authorities urged them to follow the compensation procedure under the Charter for Peace and National Reconciliation constitute a form of cruel, inhuman or degrading treatment for his family. Furthermore, the fact that one of Allal Drif's brothers also disappeared and that the authorities did not at any point attempt to assuage the resulting suffering by conducting effective investigations to shed light on the reasons for their two sons' arrest or their fate worsens the authors' pain, frustration and deep enduring anguish. Accordingly, the authors allege that the State party is responsible for a violation of article 7 of the Covenant in relation to them and to Allal Drif.

3.5 In view of the fact that Allal Drif was detained incommunicado without access to a lawyer and without being informed of the reasons for his arrest or of the charges against him, that his detention was not mentioned in police custody registers and that there is no official information as to his whereabouts or fate, the authors claim that he was deprived of his right to liberty and security of person and that he was unable to bring proceedings before a court. The authors were simply told in vague and imprecise terms that their son had been detained at the Berbissa brigade and that he had been transferred thereafter to an unknown location, without further details. They therefore consider that Allal Drif was deprived of the guarantees set out in article 9 of the Covenant, in particular of the right to an effective remedy, amounting to a violation of his rights under that article.

3.6 The authors also contend that, in the absence of any investigation by the Algerian authorities, Allal Drif was deprived of his liberty and was not treated with humanity and dignity, in violation of his rights under article 10 of the Covenant.

3.7 The authors, calling to mind the provisions of article 14 of the Covenant, as well as paragraph 9 of the Committee's general comment No. 32 (2007), claim that all the steps they have taken with the judicial and other authorities have been unsuccessful. Moreover, the Charter for Peace and National Reconciliation and article 45 of Ordinance No. 06-01 are an

impediment to any legal action against State agents, preventing the authors from having their case heard. The State party has thus violated article 14 of the Covenant with regard to them.

3.8 The authors then refer to the provisions of article 16 of the Covenant and the Committee's 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 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 relatives to obtain access to effective remedies, including judicial remedies, have been systematically impeded. On this point, they refer to the Committee's concluding observations on the second periodic report of Algeria under article 40 of the Covenant,⁴ in which the Committee established that holding incommunicado disappeared individuals who are still alive is a violation of the right to their recognition as persons before the law, that is enshrined in article 16 of the Covenant. They therefore assert that, in keeping Allal Drif in detention without officially informing his family and friends, the Algerian authorities denied him 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.

3.9 The authors consider that Ordinance No. 06-01 constitutes a violation of the general obligation assumed by the State party under article 2 (2) of the Covenant, in that this provision also implies a negative obligation for States parties to refrain from adopting measures that are contrary to the Covenant. In adopting the Ordinance, in particular article 45 thereof, the State party adopted a legislative measure that prevents the enjoyment of rights recognized under the Covenant,⁵ particularly the right to have access to an effective remedy against violations of human rights. Since the promulgation of this Ordinance, the authors have been prevented from taking legal action. They consider that a breach, by act or omission, of the obligation imposed by article 2 (2) of the Covenant may engage the international responsibility of the State party.⁶ They claim that despite all their efforts since the Charter for Peace and National Reconciliation and its implementing legislation came into force, no action has been taken on their complaints. They therefore claim to be victims of this legislative provision that violates article 2 (2) of the Covenant.

3.10 The authors add that the provisions of Ordinance No. 06-01 are contrary to article 2 (3) of the Covenant, since they have the effect of preventing any criminal proceedings against alleged perpetrators of enforced disappearance when such persons are agents of the State. The effect of this Ordinance is to grant amnesty for crimes committed in the previous decade, including the most serious crimes such as enforced disappearance. Moreover, the law prohibits, subject to a penalty of imprisonment, the use of the justice system to establish the fate of victims.⁷ The steps taken by the authors with the Algerian authorities before and after the Ordinance's adoption proved to be futile, as no response was given to them about the fate of Allal Drif. This refusal hinders the effectiveness of the remedies sought by his family. Article 2 (3) requires that States parties make reparation to individuals whose Covenant rights have been violated.⁸ Articles 27 to 39 of Ordinance No. 06-01 provide only for financial compensation, subject to the issuance of a declaration of death following an unsuccessful investigation, and article 38 excludes any other form of reparation. In practice, however, no investigation is carried out, either into the fate of the disappeared person or into those responsible for the disappearance. The authors hold that the Committee has considered that the right to an effective remedy necessarily includes the right to adequate reparation and the right to the truth, and has recommended that the State party should "undertake to ensure that disappeared persons and/or their families have access to an effective remedy and that proper follow-up is assured, while ensuring respect for the right to compensation and the fullest possible redress".⁹ The authors allege that the State party has, therefore, violated article 2 (3), read in conjunction with article 7 of the Covenant, in their regard.

⁴ CCPR/C/79/Add.95, para. 10.

⁵ See, inter alia, the concurring individual opinion of Fabián Salvioli in the case of *Djebbar and Chihoub v. Algeria* (CCPR/C/103/D/1811/2008).

⁶ Human Rights Committee, general comment No. 31 (2004), para. 4.

⁷ CCPR/C/DZA/CO/3, paras. 7 and 8.

⁸ Human Rights Committee, general comment No. 31 (2004), para. 16.

⁹ CCPR/C/DZA/CO/3, para. 12.

3.11 The authors request the Committee to ask the State party to order independent and impartial investigations with a view to: (a) locating Allal Drif and fulfilling the State party's undertaking under article 2 (3), of the Covenant; (b) bringing the instigators and perpetrators of this enforced disappearance before the competent civil authorities to face prosecution in accordance with article 2 (3) of the Covenant; and (c) ensuring that Allal Drif, if he is still alive, and his family have access to adequate, effective and prompt reparation for the injury suffered, in accordance with articles 2 (3) and 9 of the Covenant, including appropriate compensation commensurate with the gravity of the violation and full and complete rehabilitation, with guarantees of non-repetition. Lastly, they ask the Committee to urge the Algerian authorities to repeal articles 27–39, 45 and 46 of Ordinance No. 06-01.

State party's observations

4. On 22 December 2020, the State party invited the Committee to refer to the background memorandum of the Government of Algeria on handling the issue of disappearances in the light of the implementation of the Charter for Peace and National Reconciliation and therefore not to consider the merits of the case.

The authors' comments on the State's party's submission

5.1 On 17 August 2021, the authors submitted their comments on the State party's observations on the admissibility of the communication. The authors emphasize that the observations make no reference whatsoever to the admissibility of the communication, the particulars of the case or the remedies sought by the victim's family, thereby demonstrating the Algerian authorities' disregard and disdain for the current proceedings before the Committee. They also emphasize that such observations, which date back to July 2009, are outdated.

5.2 The authors, maintaining that no appeal has led to the initiation of a thorough investigation or criminal proceedings and that the Algerian authorities have not provided any tangible evidence suggesting that effective searches had been conducted to locate Allal Drif and to identify those responsible for his disappearance, conclude that domestic remedies have been exhausted and that the complaint should be considered admissible by the Committee.

5.3 The authors, relying on the Committee's jurisprudence that the Charter for Peace and National Reconciliation cannot be invoked against individuals submitting individual communications, contend that the provisions of the Charter do not in any way serve to ensure the adequate handling of the cases of missing persons, which would presuppose respect for the right to truth, justice and full and complete redress.

Lack of cooperation by the State party

6. On 15 March 2019, the State party was invited to submit its observations on the admissibility and merits of the communication and, on 23 November 2020, it was invited to submit its observations on the merits of the communication. On 22 December 2020 the State party challenged the admissibility of the communication by referring to the Government's background memorandum on handling the issue of disappearances in the light of the implementation of the Charter for Peace and National Reconciliation. The Committee notes that it has not received any specific response to the authors' allegations and regrets the State party's failure to cooperate with regard to sharing its observations on the present complaint. Article 4 (2) of the Optional Protocol requires the State party to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with whatever information is available to it.¹⁰

¹⁰ See, inter alia, *Drif and Rafraf v. Algeria* (CCPR/C/134/D/3320/2019), para. 6 ; *Dafar v. Algeria* (CCPR/C/130/D/2580/2015), para. 4; *Mezine v. Algeria* (CCPR/C/106/D/1779/2008), para. 8.3; and *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.3.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as required under article 5 (2) (a), of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the disappearance was reported to the Working Group on Enforced or Involuntary Disappearances. It points out, however, that the special procedures and mechanisms of the Human Rights Council do not generally constitute a procedure of international investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol.¹¹ Accordingly, the Committee finds that the examination of the case of Allal Drif by the Working Group on Enforced or Involuntary Disappearances does not render the communication inadmissible under this provision.

7.3 The Committee notes that the authors claim that they have exhausted all available remedies and that, by way of disputing the admissibility of the communication, the State party has simply referred to the background memorandum of the Government of Algeria on the treatment of disappearances in the light of the Charter for Peace and National Reconciliation. In this regard, the Committee notes that it has frequently expressed its concern that, despite multiple requests, the State party has continued to refer systematically to a general document (the “aide-memoire”), without responding specifically to the claims made by authors of communications.¹² The Committee therefore called on the State party, as a matter of urgency, to cooperate with it in good faith under the individual communications procedure by ceasing to refer to the “aide-memoire” and by responding individually and with specifics to the claims made by authors of communications.

7.4 The Committee also points out that the State party has not only a duty to carry out thorough investigations of alleged human rights violations brought to the attention of its authorities, particularly violations of the right to life, but also a duty to prosecute, try and punish anyone presumed to be responsible for such violations.¹³ In the present case, the Committee notes that, although the authors brought the enforced disappearance of their son to the attention of the competent authorities on many occasions, the State party has not undertaken any investigations into this serious allegation. The State party has also failed to provide any specific explanation in its observations in response to the case of Allal Drif which would make it possible to conclude that an effective remedy is currently available, especially in the light of the fact that Ordinance No. 06-01 continues to be applied and restricts the application of the Covenant, despite the Committee’s recommendations to bring it into line with the Covenant.¹⁴ In these circumstances, the Committee finds that it is not precluded from considering the communication under Article 5 (2) (b) of the Optional Protocol.

¹¹ See, inter alia, *Drif and Rafraf v. Algeria* (CCPR/C/134/D/3320/2019), para. 7.2; *Tharu et al. v. Nepal* (CCPR/C/114/D/2038/2011), para. 9.2; *Ammari v. Algeria* (CCPR/C/112/D/2098/2011), para. 7.2; *Al Daquel v. Libya* (CCPR/C/111/D/1882/2009), para. 5.2 ; and *Mihoubi v. Algeria* (CCPR/C/109/D/1874/2009), para. 6.2.

¹² *Rsiwi v. Algeria* (CCPR/C/130/D/2843/2016), para. 7.3; *Berkaoui v. Algeria* (CCPR/C/130/D/2639/2015), para. 7.3; *Souaiene and Souaiene v. Algeria* (CCPR/C/128/D/3082/2017), para. 7.3; *Bendjael and Bendjael v. Algeria* (CCPR/C/128/D/2893/2016) para. 7.3; *Cherguit v. Algeria* (CCPR/C/128/D/2828/2016), para. 6.3; and *Habouchi v. Algeria* (CCPR/C/128/D/2819/2016) para. 7.3.

¹³ *Boudjemai v. Algeria* (CCPR/C/107/D/1791/2008), para. 7.4; *Mezine v. Algeria*, para. 7.4; *Khirani et al. v. Algeria* (CCPR/C/104/D/1905/2009 and CCPR/C/104/D/1905/2009/Corr.1), para. 6.4; and *Berzig v. Algeria* (CCPR/C/103/D/1781/2008), para. 7.4.

¹⁴ *Drif and Rafraf v. Algeria* (CCPR/C/134/D/3320/2019), para. 7.4; *Berkaoui v. Algeria*, para. 7.4; *Souaiene and Souaiene v. Algeria*, para. 7.4; *Bendjael and Bendjael v. Algeria*, para. 7.4; *Cherguit v. Algeria*, para. 6.4; and *Habouchi v. Algeria*, para. 7.4.

7.5 Furthermore, since submitting a communication five years after the exhaustion of domestic remedies¹⁵ may amount to an abuse of the right of submission – even if the State party has not raised this point in the present case – the Committee maintains that the continuous nature of enforced disappearance implies a continuous obligation to investigate such cases, which in this case is made impossible by Ordinance No. 06-01 and its effects.¹⁶ The Committee therefore does not consider that, in the special circumstances of the case, the present communication constitutes an abuse of the right of submission.

7.6 The Committee notes that the authors have also claimed a separate violation of their rights under article 2 (2) and (3) of the Covenant. The Committee, recalling its jurisprudence according to which the provisions of article 2 lay down general obligations for States parties and cannot, by themselves, give rise to a separate claim under the Optional Protocol, as they can be invoked only in conjunction with other substantive articles of the Covenant,¹⁷ considers the authors' claims under article 2 (2) and (3) of the Covenant, invoked separately, to be inadmissible under article 3 of the Optional Protocol.¹⁸

7.7 On the other hand, the Committee considers that the authors have sufficiently substantiated their other allegations for the purposes of admissibility and therefore proceeds with its consideration of the merits of the claims made under articles 6, 7, 9, 10 and 16 of the Covenant, read alone and in conjunction with article 2 (3), in respect of Allal Drif, and article 7, read alone and in conjunction with article 2 (3), and article 14 of the Covenant in respect of the authors.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information submitted to it, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee notes that the State party has merely referred to its collective and general comments, which it had previously transmitted to the Working Group on Enforced or Involuntary Disappearances and the Committee in connection with other communications, in order to confirm its position that such cases have already been settled through the implementation of the Charter for Peace and National Reconciliation. The Committee refers to its jurisprudence¹⁹ and points out that the State party must not apply the provisions of the Charter for Peace and National Reconciliation to persons who invoke the provisions of the Covenant or who have submitted or may submit communications to the Committee.²⁰ Ordinance No. 06-01, without the amendments recommended by the Committee, promotes impunity in the present case and cannot, in its current form, be considered compatible with the Covenant.²¹

8.3 The Committee notes that the State party has not replied to the authors' allegations concerning the merits of the case and recalls its jurisprudence, according to which the burden of proof must 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.²² Article 4 (2) of the Optional Protocol requires the State party to investigate in good faith all allegations of

¹⁵ Rule. 99 (c) of the Committee's rules of procedure. See also *Drif and Rafrat v. Algeria* (CCPR/C/134/D/3320/2019), para. 7.5.

¹⁶ *Rsiwi v. Algeria*, para. 7.6; *Berkaoui v. Algeria*, para. 7.5; and *Dafar v. Algeria*, para. 5.4.

¹⁷ See, e.g., *Ch. H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.4; *H.E.A.K. v. Denmark* (CCPR/C/114/D/2343/2014), para. 7.4; *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4.

¹⁸ *Souaiene and Souaiene v. Algeria*, para. 7.5.

¹⁹ See, inter alia, *Boudjemai v. Algeria*, para. 8.2; *Mezine v. Algeria*, para. 8.2; and *Berzig v. Algeria*, para. 8.2.

²⁰ The Covenant requires the State party to concern itself with the fate of every individual and to treat every individual with respect for the inherent dignity of the human person.

²¹ *Dafar v. Algeria*, para. 6.4; *Zaier v. Algeria* (CCPR/C/112/D/2026/2011), para. 7.2; and *Ammari v. Algeria*, para. 8.2.

²² See, inter alia, *Ammari v. Algeria*, para. 8.3; *Mezine v. Algeria*, para. 8.3; *Berzig v. Algeria*, para. 8.3; and *El Abani v. Libyan Arab Jamahiriya* (CCPR/C/99/D/1640/2007), para. 7.4.

violations of the Covenant made against it and its representatives and to provide the Committee with whatever information is available to it.²³ In the absence of any explanations from the State party in this respect, due weight must be given to the authors' allegations, provided they have been sufficiently substantiated.

8.4 The Committee maintains that, while the term "enforced disappearance" does not appear expressly in any article of the Covenant, enforced disappearance constitutes a single, integrated group of acts that represents a continuing violation of various rights recognized in that treaty, including the right to life, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment and the right to liberty and security of the person.²⁴

8.5 The Committee notes that the authors last saw their son on 29 January 1995, when he was leaving home to go to work. A witness of the scene identified the head of the Berbissa gendarmerie brigade and two members of the communal guard. When Khoukha Rafrat was summoned to the Blida military court on 19 April 1999, military personnel confirmed that her son had indeed been arrested by the Berbissa gendarmerie brigade and that he had been transferred thereafter, without giving her any further information. The Committee notes that the State party has produced no evidence to establish what happened to Allal Drif. It consistently holds that, in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate of the disappeared person, effectively removes the person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.²⁵ In the present case, the Committee notes that the State party has produced no evidence to indicate that it fulfilled its obligation to protect the life of Allal Drif. The Committee therefore finds that the State party has failed in its duty to protect Allal Drif's life, in violation of article 6 (1) of the Covenant.

8.6 The Committee recognizes the degree of suffering entailed by 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, in which it recommends that States parties take steps to prohibit incommunicado detention. It notes in this case that, after being told during an interview on 19 April 1999 at the Blida military court, when soldiers confirmed to Khoukha Rafrat that her son had indeed been arrested by the Berbissa gendarmerie brigade and had subsequently been transferred, the authors never again received any official information about his fate or place of detention, despite several successive requests to the State authorities. The Committee therefore considers that it is possible that Allal Drif, who disappeared on 29 January 1995, is still being held incommunicado by the Algerian authorities. In the absence of any explanation from the State party, the Committee considers that the disappearance of Allal Drif constitutes a violation of article 7 of the Covenant with respect to him.²⁶

8.7 In view of the above, the Committee will not examine separately the authors' claims under article 10 of the Covenant.²⁷

8.8 With regard to the alleged violation of article 9 of the Covenant, the Committee takes note of the authors' allegations that Allal Drif was arbitrarily arrested, without a warrant, was not formally charged and was not brought before a judicial authority, which would have enabled him to challenge the lawfulness of his detention. In the absence of any information from the State party on this subject, the Committee considers that due weight must be given

²³ *Mezine v. Algeria*, para. 8.3; and *Medjnoune v. Algeria*, para. 8.3.

²⁴ *El Boathi v. Algeria* (CCPR/C/119/D/2259/2013), para. 7.4; *Serna et al. v. Colombia* (CCPR/C/114/D/2134/2012), para. 9.4; and *Katwal v. Nepal* (CCPR/C/113/D/2000/2010), para. 11.3. See also the Committee's general comment No. 36 (2018), para. 58.

²⁵ *Louddi v. Algeria* (CCPR/C/112/D/2117/2011), para. 7.4; *Boudjemai v. Algeria*, para. 8.4; and *Mezine v. Algeria*, para. 8.4. See also the Committee's general comment No. 36 (2018), para. 58.

²⁶ *Cherguit v. Algeria*, para. 7.6; *Bendjael and Bendjael v. Algeria*, para. 8.6; *Braih v. Algeria* (CCPR/C/128/D/2924/2016), para. 6.5; *Berzig v. Algeria*, para. 8.5; and *El Alwani v. Libyan Arab Jamahiriya* (CCPR/C/90/D/1295/2004), para. 6.5.

²⁷ *Berkaoui v. Algeria*, para. 8.7; *Dafar v. Algeria*, para. 6.7; *Rsiwi v. Algeria*, para. 8.7; and *Ammari v. Algeria*, para. 8.6.

to the authors' allegations.²⁸ The Committee therefore finds a violation of article 9 of the Covenant in respect of Allal Drif.²⁹

8.9 The Committee is of the view that the intentional removal of a person from the protection of the law constitutes a denial of his or her right to recognition as a person before the law, in particular if the efforts of his or her relatives to obtain access to effective remedies have been systematically impeded.³⁰ In the present case, the Committee notes that the State party has not furnished any explanation concerning the fate or whereabouts of Allal Drif, despite the steps taken by his parents and the fact that, when he was last seen, Allal Drif was in the hands of the authorities. The Committee finds that Allal Drif's enforced disappearance more than 27 years ago removed him from the protection of the law and deprived him of his right to be recognized as a person before the law, in violation of article 16 of the Covenant.

8.10 The Committee also takes note of the anguish and distress caused to the authors by the disappearance, over 27 years ago, of Allal Drif. The Committee therefore considers that the facts before it reveal a violation of article 7 of the Covenant with regard to the authors.³¹

8.11 Lastly, the Committee notes that although the authors have not expressly invoked a violation of article 2 (3), read in conjunction with articles 6, 9 and 16 of the Covenant, they refer to the obligation imposed on States parties by that provision to ensure that everyone has accessible, effective and enforceable remedies to exercise the rights guaranteed by the Covenant.³² The Committee attaches importance to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of rights violations provided for in the Covenant.³³ It refers to its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it states that a failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.

8.12 In the present case, the authors have repeatedly alerted the competent authorities to the disappearance of their son, but the State party has failed to conduct an investigation into this disappearance and has not informed the authors of Allal Drif's fate. Furthermore, the legal impossibility of applying to a judicial body since the promulgation of Ordinance No. 06-01 continues to deprive Allal Drif and the authors of any access to an effective remedy, given that the Ordinance prohibits using the justice system to shed light on the worst offences, such as enforced disappearance.³⁴ The Committee finds that the facts before it reveal a violation of article 2 (3), read in conjunction with articles 6, 7, 9 and 16 of the Covenant, with regard to Allal Drif and of article 2 (3), read in conjunction with article 7 of the Covenant, with regard to the authors.³⁵

8.13 In view of the above, the Committee will not examine separately the authors' claims under article 14 of the Covenant.³⁶

9. The Committee, acting under article 5 (4) of the Optional Protocol, finds that the information before it discloses a violation by the State party of articles 6, 7, 9 and 16 of the Covenant, read alone and in conjunction with article 2 (3), with regard to Allal Drif. It also finds a violation by the State party of article 7, read alone and in conjunction with article 2 (3) of the Covenant, with regard to the authors.

²⁸ *Chani v. Algeria* (CCPR/C/116/D/2297/2013), para. 7.5.

²⁹ See, inter alia, *Mezine v. Algeria*, para. 8.7; *Khirani et al. v. Algeria*, para. 7.7; and *Berzig v. Algeria*, para. 8.7.

³⁰ *Basnet v. Nepal* (CCPR/C/117/D/2164/2012), para. 10.9; *Tharu et al. v. Nepal*, para. 10.9; and *Serna et al. v. Colombia*, para. 9.5.

³¹ *Mezine v. Algeria*, para. 8.6; *Khirani et al. v. Algeria*, para. 7.6; *Berzig v. Algeria*, para. 8.6; *El Abani v. Libyan Arab Jamahiriya*, para. 7.5; and *El Hassy v. Libyan Arab Jamahiriya* (CCPR/C/91/D/1422/2004), para. 6.11.

³² *Cherguit v. Algeria*, para. 7.13; and *Souaiene and Souaiene v. Algeria*, para. 8.12.

³³ *Allioua and Kerouane v. Algeria* (CCPR/C/112/D/2132/2012), para. 7.11.

³⁴ CCPR/C/DZA/CO/3, para. 7.

³⁵ *Drif and Rafraf v. Algeria* (CCPR/C/134/D/3320/2019), para. 8.12.

³⁶ *Ibid.*, para. 8.13.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to persons whose rights under the Covenant have been violated. In the present case, the State party is required: (a) to conduct a prompt, effective, thorough, independent, impartial and transparent investigation into the disappearance of Allal Drif and provide the authors with detailed information about the results of its investigation; (b) to release Allal Drif immediately if he is still being held incommunicado; (c) in the event that Allal Drif is deceased, to hand over his remains to his family in a dignified manner, in accordance with the cultural norms and customs of the victims; (d) to prosecute, try and punish those responsible for the violations in a way that is commensurate with the gravity of the violations; and (e) to provide the authors and Allal Drif, if he is alive, with appropriate compensation and access to any medical and psychological treatment they may need. The State party is also under an obligation to take measures to prevent similar violations in the future. The State party is required to ensure that it does not impede enjoyment of the right to an effective remedy for such serious violations as torture, extrajudicial execution and enforced disappearance. To this end, it should review its legislation in accordance with its obligation under article 2 (2) of the Covenant and, in particular, repeal the provisions of Ordinance No. 06-01 that are incompatible with the Covenant to ensure that the rights enshrined in the Covenant can be enjoyed fully in the State party.

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 there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and 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 present Views. The State party is also requested to publish the present Views and to have them widely disseminated in its official languages.
