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Ninety-fourth session
13-31 October 2008

VIEWS

Communication No. 1495/2006

Submitted by:	Zohra Madoui (represented by counsel, Nassera Dutour)
Alleged victim:	The author and her son Menouar Madoui
State party:	Algeria
Date of communication:	19 July 2006 (initial submission)
Document references:	Special Rapporteur's rule 91 decision, transmitted to the State party on 3 October 2006 (not issued in document form)
Date of adoption of Views:	28 October 2008
Subject matter:	Enforced disappearance
Procedural issues:	None

* Reissued for technical reasons.

** Made public by decision of the Human Rights Committee.

Substantive issues:	Prohibition of torture and cruel, inhuman or degrading treatment or punishment; right to liberty and security of person; arbitrary arrest and detention; right to recognition as a person before the law; right to effective remedy
Articles of the Covenant:	7, 9, 10, 16 and 2, paragraph 3
Articles of the Optional Protocol:	None

On 28 October 2008, 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. 1495/2006.

[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

Ninety-fourth session

concerning

Communication No. 1495/2006*

Submitted by: Zohra Madoui (represented by counsel, Nassera Dutour)

Alleged victim: The author and her son Menouar Madoui

State party: Algeria

Date of communication: 19 July 2006 (initial submission)

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

Meeting on 28 October 2008,

Having concluded its consideration of communication No. 1495/2006, submitted by Zohra Madoui on her own behalf and on behalf of her son Menouar Madoui under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

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

1. The author of the communication, dated 19 July 2006, is Zohra Madoui, an Algerian citizen born in Algeria on 28 November 1944. She claims that her son, Menouar Madoui, born in Algeria on 9 February 1970, is a victim of violations by Algeria of article 7; article 9; article 16; and article 2, paragraph 3, of the Covenant. She also claims that she herself has been a victim of

* The following members of the Committee took part in the consideration of the communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè-Ahanhanzo, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Ahmed Tawfik Khalil, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

violations by Algeria of article 7 and article 2, paragraph 3, of the Covenant. The Covenant and the Optional Protocol entered into force for Algeria on 12 December 1989. The author is represented by counsel, Nassera Dutour.

Facts as presented by the author

2.1 In early March 1997, Menouar Madoui, the author's son, and his friend Hassen Tabeth, were arrested by gendarmes and detained for failure to produce their identity documents during a check. Menouar Madoui was held for 13 days at the gendarmerie in Larbâa. When the author visited him in detention, she noticed that her son was soaking wet. He told her that he had been tortured with electric shocks.

2.2 On 7 May 1997, the city of Larbâa was cordoned off by the combined forces of the police, army and gendarmerie, who carried out a sweep of the city, searching most of the houses and making many arrests. Menouar Madoui was at the market that day and, when the combined forces stormed the market he took refuge in a friend's shop. When things calmed down he went to prayers at the main mosque in Larbâa, near the town hall, but by nightfall he had not returned home to his mother.

2.3 The next morning the author went to look for her son. At the mosque, a man told her he had witnessed some arrests the day before. Four young men had been arrested by plain-clothes police outside the mosque, handcuffed and put in an unmarked car. The author went to the gendarmerie where her son had been held a few months earlier. The gendarmes told her they had not arrested him. She then went to the barracks nearby, but the military referred her to the municipal police (*garde communale*), who in turn directed her to the police station. She went to the police station and then made the rounds of all the barracks in the town, at one of which a soldier told her that she should look in the maquis instead. As a last resort, in the late afternoon, the author went to the operational command headquarters (*poste de commandement opérationnel* - PCO) on the road to El Fâas, where a member of the legitimate defence group (GLD) said that her son had been brought in the night before and was being held there. She asked if she could bring him some food but he said she could only bring clothes.

2.4 After that the author went to the PCO every day to try to see her son. Every day the officers on duty gave her a different answer. Some admitted that her son was being held there, others said not. Meanwhile the author continued to go round all the police stations in the area, as well as prisons, barracks, the hospital and the morgue, to glean information about her son. She was sent back and forth from one to the other. By some she was told that her son had been transferred to the prison in Blida or Tizi-Ouzou, by others that he had been admitted to the psychiatric hospital in Blida, or even that he had been released.

2.5 On 21 May 1997 the author explained her position to the public prosecutor in Larbâa, who wrote to the chief of police of Larbâa and instructed the author to deliver the letter personally so that the police chief could launch an investigation into her son's disappearance. The author duly presented the chief of police with the letter and a file; she never received any report of an investigation. On 2 January 2000, a statement from the Larbâa police informed the author that the inquiry into her son's whereabouts ordered by the Larbâa public prosecutor had been closed.

2.6 Forty days after her son's disappearance, the author still had no news and returned to the PCO. A policeman told her that her son was still there, but would probably be released the following day. She therefore waited outside the PCO the next day for him to be released. A senior officer noticed her and went over to ask what she was doing there. When she explained that she was waiting for her son to be released he told her to leave at once and threatened her. When she refused he became aggressive and, pinning her to the wall, slapped and punched her repeatedly. Shocked, the author fled; thereafter, her enquiries were less energetic.

2.7 In February 1998 the author went to the court in Blida, where she was seen by the Government prosecutor, who wrote to the prosecutor with the court in Larbâa, who in turn wrote to the PCO commanding officer. As a result the author obtained a meeting with the PCO commanding officer, who again told her that her son's case was the responsibility of the Larbâa police. Two weeks later the anti-terrorist squad came to the author's home with a summons for questioning at the PCO. The author found an excuse not to go with them and said she would go later. She first told her relatives and then went to the PCO in the afternoon, where she was questioned again about her son's disappearance. Nothing ever came of that interview. The author subsequently received another two summonses from the Larbâa police station (9 January 2000 and 16 June 2001), one from the Larbâa gendarmerie (5 December 2005) and another from the gendarmerie at El Biar (21 December 2005).

2.8 In May 1998 Hassen Tabeth, who had been arrested with the author's son in March 1997 (see paragraph 2.1 above), went to see the author on his release from prison. He told her that a fellow-prisoner at Blida prison had told him he had been arrested along with her son and that her son had been taken to the prison in Boufarik. The author went to Boufarik but a warder told her that her son was not there. On 11 May 1998 the author lodged a complaint with the Government prosecutor at the Bab Essabt court. She has never had a response.

2.9 In June 1998 another person confirmed that the author's son was indeed being held at Boufarik prison. The person said that he had been arrested on 8 May 1997, the day after the author's son, and that they had shared a cell in Boufarik prison. However, he said they were not held in an ordinary prison but shut underground in the dark. He said that, at the time of his release, the author's son had still been alive.

2.10 In 1999 Menouar Madoui's brother-in-law heard from someone who had just been let out after five years of incommunicado detention that he had shared a cell (cell No. 6) with the author's son in Serkadji prison. The author went to Serkadji and was told she had to apply to the Supreme Court for a visiting permit if she wanted to see her son. As the author is illiterate, she consulted her friends, who suggested she apply to the Algiers Court for a permit. The Algiers Court informed her that issuing visiting permits was not one of its tasks and she must approach the court in Larbâa. The officials at the court in Larbâa advised her not to pursue the matter further. Frightened, the author abandoned her quest for a visiting permit.

2.11 On 30 March 2004 the author filed a complaint with the Larbâa public prosecutor, with a copy to the Government prosecutor in Blida, challenging the transfer of her son's case to the district of Baraki when he had been arrested in Larbâa. On 7 January 2006 she received a summons from the Larbâa court. She went to the court on 6 February 2006 and was asked to produce the witnesses who claimed to have seen her son. However, since their safety could not be guaranteed, the witnesses refused to appear for fear of reprisals.

Complaint

3.1 In respect of article 7, the author recalls that, when first arrested in March 1997, her son said he had been tortured with electric shocks. She argues that her son's forced disappearance is in itself a violation of article 7. She recalls that the Committee has accepted that being the victim of enforced disappearance may constitute inhuman or degrading treatment.[1]

3.2 As to the author herself, she claims that her son's disappearance has been a painful and agonizing ordeal. She had found him in a serious condition once before, after his first arrest. This time, following his disappearance, she has no idea what has become of him. This is compounded by the fact that the various authorities she approached starting the day after he went missing continually sent her back and forth from one to the other. They all gave different answers, some simply confusing her but, at their worst, raising her hopes of finding her son. Those hopes were always dashed. The author recalls that the Committee has accepted that the disappearance of a loved one could constitute a violation of article 7 for the family.[2]

3.3 With regard to article 9, the author recalls that her son's detention was not entered in the registers of police custody and there is no official record of his whereabouts or his fate. The fact that his detention is not acknowledged and that the Government authorities persistently refuse to reveal what has happened to him means that he has been arbitrarily deprived of his liberty and security of person in violation of article 9. The author cites the Committee's case law whereby any unacknowledged detention of a person constitutes a complete negation of the right to liberty and security of person guaranteed under article 9.[3]

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[1] See communications Nos. 449/1991, *Mojica v. Dominican Republic*, Views adopted on 15 July 1994, para. 5.7; 540/1993, *Celis Laureano v. Peru*, Views adopted on 25 March 1996, para. 8.5; 542/1993, *Tshishimbi v. Zaire*, Views adopted on 25 March 1996, para. 5.5; 992/2001, *Bousroual v. Algeria*, Views adopted on 30 March 2006, para. 9.8; and 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 9.6.

[2] See communication No. 107/1981, *Quinteros v. Uruguay*, Views adopted on 21 July 1983, para. 14; and concluding observations on the second periodic report of Algeria, CCPR/C/79/Add.95, 18 August 1998, para. 10.

[3] See communications Nos. 8/1977, *Weismann and Perdomo v. Uruguay*, Views adopted on 3 April 1980, para. 16; 139/1983, *Conteris v. Uruguay*, Views adopted on 17 July 1985, para. 10; 181/1984, *Arévalo v. Colombia*, Views adopted on 3 November 1989, para. 11; 563/1993, *Bautista v. Colombia*, Views adopted on 27 October 1995, para. 8.5; 612/1995, *Vicente et al. v. Colombia*, Views adopted on 29 July 1997, para. 8.6; 992/2001, *Bousroual v. Algeria*, Views adopted on 30 March 2006, para. 9.5; and 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 9.5.

3.4 As to article 16, the author believes that her son's forced disappearance is inherently a denial of the right to recognition everywhere as a person before the law. She cites the 18 December 1992 Declaration on the Protection of All Persons from Enforced Disappearance.[4]

3.5 As regards article 2, paragraph 3, the author recalls that the State party has an obligation to provide an effective remedy for the violations she and her son have suffered.[5] She claims that, as the victim of enforced disappearance, her son has been denied the right to an effective remedy for his arbitrary detention and the various violations he has suffered. She has tried to find her son by all legal means and has exercised all available remedies to that end without result. The State has therefore violated its obligations to conduct a thorough and diligent investigation into his disappearance, to inform the author of the outcome of that investigation, to institute criminal proceedings against those held to be responsible for his disappearance, to try them and to punish them.

3.6 Regarding the exhaustion of domestic remedies, the author argues that, according to the Committee's case law, only effective and available remedies within the meaning of article 2, paragraph 3, need to be exhausted.[6] Since this case concerns a serious violation of her son's fundamental rights, she recalls the Committee's case law whereby only remedies of a judicial nature need to be exhausted.[7] In this case the author has attempted remedies of every kind, administrative and judicial, without result. In the case of administrative remedies, she repeatedly sought information concerning her son's fate, approaching various authorities who continually sent her from pillar to post and gave her no clear information. On 6 July 1998 she approached the Ombudsman. On 4 August 1998 she approached the National Human Rights Observatory, which merely told her that her son had no criminal record. On 29 March 2004 she wrote a letter addressed to the President of the Republic, the Prime Minister, the Minister of Justice and the President of the National Advisory Commission for the Promotion and Protection of Human Rights. She received no reply. As for judicial remedies, she filed several complaints with a number of courts, none of which led to any serious investigation into her son's disappearance. Furthermore, with the adoption by referendum of the Charter for Peace and Reconciliation on 29 September 1995, and the entry into force of a presidential order implementing the Charter on 28 February 2006, the author believes there are no more effective remedies available to her.

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[4] See also concluding observations on the second periodic report of Algeria, CCPR/C/79/Add.95, 18 August 1998, para. 10.

[5] See communication No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 11.

[6] See, for example, communication No. 147/1983, *Arzuada Gilboa v. Uruguay*, Views adopted on 1 November 1985, para. 7.2.

[7] See communications Nos. 563/1993, *Bautista v. Colombia*, Views adopted on 27 October 1995, para. 5.1; 612/1995, *Vicente et al. v. Colombia*, Views adopted on 29 July 1997, para. 5.2; and 778/1997, *Navarro et al. v. Colombia*, Views adopted on 24 October 2002, para. 6.2.

3.7 The author mentions that her son's case was submitted to the United Nations Working Group on Enforced or Involuntary Disappearances. However, she notes that the Committee holds that extra-conventional procedures and mechanisms established by the former Commission on Human Rights do not constitute procedures of international investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.[8]

3.8. The author asks the Committee to request the State party to order independent investigations with a view to locating her son and to bring the perpetrators of the enforced disappearance before the competent civil authorities for prosecution in accordance with article 2, paragraph 3, of the Covenant. She also requests appropriate reparation for herself and her family, such reparation to include adequate compensation and a full and complete rehabilitation of her son including, for example, medical care and psychological support.

State party's observations on admissibility and merits

4. On 28 July 2008, the State party indicated that it has made every effort to locate the author's son. Enquiries have been made with the civil and military authorities cited by the author, and they have categorically denied that her son was ever arrested. Investigations have also been made in all the places mentioned by the author and her son has never been detained in any of them. An examination of the register at Boufarik prison, referred to by the author, shows that her son has not been held there. There are signed statements from several witnesses, including his brother-in-law, Ramdane Mohammed, to the effect that the author's son is mentally ill and frequently runs away from home.[9]

Author's comments on the State party's observations

5.1 In comments dated 8 September 2008, the author argued that the State party was merely recapitulating the domestic judicial procedure. At no time does it produce concrete evidence 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.[10]

5.2 On the merits, the author recalls that, even though several witnesses saw her son being arrested and a policeman twice told her that her son was being held at the PCO on the road to El Fâas, the authorities deny having arrested him. Furthermore, he had also been arrested in March 1997, two months before the second arrest in May 1997, and on that occasion had been detained for 13 days in the Larbaâ gendarmerie, where he had been tortured. The author notes

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[8] See communication No. 540/1993, *Celis Laureano v. Peru*, Views adopted on 25 March 1996, para. 7.1.

[9] The State party has not provided these statements.

[10] See communication No. 107/1981, *Quinteros v. Uruguay*, Views adopted on 21 July 1983, para. 11.

that the Algerian authorities never mention the case of Hassan Tabeth, who had been arrested along with her son and who told her when he came out of prison that a fellow-prisoner, Nourredine, had told him he had been in prison with her son at Boufarik.

5.3 Regarding the State party's claim that her son is mentally disabled, the author says that, in her description of the facts of the case, she certainly mentions having visited a psychiatric hospital in the course of her enquiries (see paragraph 2.4 above), but that is an instinctive reflex common to all families of missing persons after they have searched for a few days. The families are aware that torture is routine and assume that treatment of that kind could cause their relatives to lose their mind and be put in a psychiatric hospital. She says there has never been any question of mental disability in her son. Moreover, his brother-in-law, Mohammed Ramdane, has never been summoned by the authorities and has never signed any statement alleging that Menouar Madoui suffers from mental disability. She does however remember that, in the course of her enquiries, she one day explained to the gendarmes that her son Menouar was the household's sole breadwinner and that it was imperative that they should find him; she had then told them that her other son, Mohammed Madoui, born on 15 January 1965, was mentally disabled and unable to work. The gendarmes had asked her to provide documents to show her son was disabled, which she did, believing the gendarmes would act on them. This clearly shows that the authorities have never conducted any proper investigation.

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 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the case was submitted to the United Nations Working Group on Enforced or Involuntary Disappearances.[11] However, it recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Economic and Social Council, and 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 constitute procedures of international investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.[12] The Committee recalls that the study of human rights problems of a more global character, although it might refer to or draw on information concerning individuals, cannot be seen as being the same matter as the examination of individual cases within the meaning of

[11] The Working Group on Enforced or Involuntary Disappearances transmitted the case to the Algerian Government on 27 June 2005. As yet no reply has been received from the Government.

[12] See communication No. 540/1993, *Celis Laureano v. Peru*, Views adopted on 25 March 1996, para. 7.1.

article 5, paragraph 2 (a), of the Protocol. Accordingly, the Committee considers the fact that Menouar Madoui's case was registered before the Working Group on Enforced or Involuntary Disappearances does not make it inadmissible under this provision.[13] As the Committee finds no other reason to consider the communication inadmissible, it proceeds with its consideration of the claims on the merits, under article 7; article 9; article 16; and article 2, paragraph 3, as presented by the author.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the written information communicated 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 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, in view of her son's disappearance on 7 May 1997, the author invokes articles 7, 9 and 16.

7.3 The Committee notes that the State party has not provided satisfactory answers to the author's allegations concerning the forced disappearance of her son. It recalls that the burden of proof does not 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.[15] 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

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[13] Ibid.

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

[15] See communication No. 139/1983, *Conteris v. Uruguay*, Views adopted on 17 July 1985, para. 7.2; and communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.3.

exclusively in the hands of the State party, the Committee may consider an author's allegations substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party.

7.4 In the present case, the Committee notes that the author's son disappeared on 7 May 1997 and that his family does not know what has happened to him. However, the author received certain information from various sources indicating that her son had been arrested by the authorities on that day and subsequently held in various places. Several soldiers told her that her son had been detained at the operational command headquarters on the road to El Fâas (see paragraphs 2.3, 2.4 and 2.6 above). Moreover, she also learned from at least two persons - including Hassen Tabeth, a friend of her son who had been arrested with him - that her son had been held in the prison in Boufarik (see paragraphs 2.8 and 2.9 above). She also learned from another person that her son had been held in Serkadji prison (see paragraph 2.10 above). The Committee notes that the State party has merely replied that the author's son had not been arrested or detained by the authorities. The State party added that the author's son suffers from psychiatric problems and simply ran away from the family home. The Committee nevertheless observes that the State party has provided no evidence to substantiate its statements. In the absence of a satisfactory explanation by the State party regarding the disappearance of the author's son, the Committee considers that this disappearance constitutes a violation of article 7.

7.5 The Committee also notes the anguish and distress that the disappearance of the author's son on 7 May 1997 has caused the mother. It therefore is of the opinion that the facts before it disclose a violation of article 7 of the Covenant with regard to the mother.[16]

7.6 As to the alleged violation of article 9, the information before the Committee shows that the author's son disappeared on 7 May 1997 in Larbâa. The Committee notes that this information has not been contested by the State party. According to the author, her son was arrested by agents of the State party on that day, which was confirmed by Hassen Tabeth, a friend of her son who had been arrested with him (see paragraph 2.8 above). Moreover, several persons had confirmed to her that, following his arrest, her son had been held in various places (see paragraph 7.4 above). The Committee notes that the State party merely replies that the author's son was not arrested or detained by the authorities. Nevertheless, the Committee observes that the State party has provided no evidence to substantiate its statements. In the absence of adequate explanations by the State party concerning the author's allegations that her son's arrest and subsequent incommunicado detention were arbitrary and illegal, the Committee finds a violation of article 9.[17]

7.7 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

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[16] See communications Nos. 107/1981, *Quinteros v. Uruguay*, Views adopted on 21 July 1983, para. 14; and 950/2000, *Samra v. Sri Lanka*, Views adopted on 31 July 2003, para. 9.5.

[17] See communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.5.

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 their 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,[18] 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.[19]

7.8 In the present case, the author says that her son was arrested along with three other people by plainclothes police on 7 May 1997. He was then allegedly taken to the operational command headquarters (PCO) and thence to the prison in Boufarik. There has been no news of him since that date. The Committee notes that the State party has failed to provide any satisfactory explanation concerning the author's claim to have had no news of her son since 7 May 1997, and it appears not to have conducted a thorough investigation into the fate of the son or provided the author with any effective remedy. The Committee 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 authorities' failure to provide information 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.[20]

7.9 The author invokes article 2, paragraph 3, of the Covenant, which requires States parties to ensure that individuals have accessible, effective and enforceable remedies for asserting the rights enshrined in the Covenant. The Committee attaches importance to States parties' establishment of appropriate judicial and administrative mechanisms for addressing alleged violations of rights under domestic law. It refers to its general comment No. 31, 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.[21] In the present case, the information before it indicates that the

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

[19] See communication No. 1327/2004, *Grioua v. Algeria*, Views adopted on 10 July 2007, para. 7.8.

[20] Ibid, para. 7.9.

[21] See para. 15.

author did not have access to such effective remedies, 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 author's son, and a violation of article 2, paragraph 3, of the Covenant in conjunction with article 7, 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 of article 7, article 9 and article 16 and of article 2, paragraph 3, in conjunction with articles 7, 9 and 16 of the Covenant in respect of the author's son; and of article 7 and of article 2, paragraph 3, in conjunction with article 7 of the Covenant in respect of the author herself.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with reparation in the form of compensation. While the Covenant does not give individuals the right to demand of a State 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 acts of torture, but also to prosecute, try and punish the culprits.[23] The State party is therefore also under an obligation to prosecute, try and punish those held responsible for these violations. The State party is, further, required to take measures to prevent similar violations in the future.

10. Bearing in mind that, by becoming a State 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, 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 where 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 its 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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[22] See communications Nos. 213/1986, *H.C.M.A. v. The Netherlands*, Views adopted on 30 March 1989, para. 11.6; and 612/1995, *Vicente et al. v. Colombia*, Views adopted on 29 July 1997, para. 8.8.

[23] See communications Nos. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 11; and 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 10.