



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1791/2008

Views adopted by the Committee at its 107th session (11–28 March 2013)

<i>Submitted by:</i>	Hafsa Boudjemai (represented by TRIAL – Track Impunity Always)
<i>Alleged victim:</i>	Djaafar Sahbi (son of the author) and the author herself
<i>State party:</i>	Algeria
<i>Date of communication:</i>	26 May 2008 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 6 June 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	22 March 2013
<i>Subject matter:</i>	Enforced disappearance
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to life, prohibition of torture and cruel or inhuman treatment, right to liberty and security of person, respect for the inherent dignity of the human person, recognition as a person before the law and the right to an effective remedy, unlawful interference with the home
<i>Articles of the Covenant:</i>	Articles 2 (para. 3), 6 (para. 1), 7, 9 (paras. 1–4), 10 (para. 1), 16 and 17
<i>Article of the Optional Protocol:</i>	Article 5 (para. 2 (b))

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (107th session)

concerning

Communication No. 1791/2008*

Submitted by: Hafsa Boudjemai (represented by TRIAL – Track Impunity Always)

Alleged victim: Djaafar Sahbi (son of the author) and the author herself

State party: Algeria

Date of communication: 26 May 2008 (initial submission)

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

Meeting on 22 March 2013,

Having concluded its consideration of communication No. 1791/2008, submitted to the Human Rights Committee by Hafsa Boudjemai under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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

1.1 The author of the communication, which is dated 26 May 2008, is Hafsa Boudjemai, a widow, who claims that her son, Djaafar Sahbi, was the victim of violations by Algeria of articles 2 (para. 3), 6 (para. 1), 7, 9 (paras. 1–4), 10 (para. 1), 16 and 17 (para. 1) of the International Covenant on Civil and Political Rights. The author claims that she herself is

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

Two individual opinions are appended to these Views, an individual opinion (partially dissenting) of Mr. Rodríguez-Rescia and an individual opinion (concurring) of Mr. Salvioli.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Lazhari Bouzid did not participate in the consideration of the communication.

the victim of violations of articles 2 (para. 3), 7 and 17 (para. 1) of the Covenant. She is represented by the Swiss anti-impunity organization TRIAL (Track Impunity Always).

1.2 On 6 June 2008, in accordance with rule 92 of its rules of procedure, the Committee, through its Special Rapporteur on new communications and interim measures, asked the State party not to take any measure that might hinder the exercise by the author and her family of their right to submit an individual complaint to the Committee. Accordingly, the State party was requested not to invoke its national legislation, and specifically Ordinance No. 06-01 of 27 February 2006 concerning the implementation of the Charter for Peace and National Reconciliation, against the author and the members of her family.

1.3 On 12 March 2009, the Committee, through its Special Rapporteur on New Communications and Interim Measures, decided not to examine the admissibility of the communication separately from the merits.

The facts as presented by the author

2.1 On the morning of 3 July 1995, Djaafar Sahbi accompanied one of his daughters, who was 8 years old, to a doctor's appointment at Mustapha Bacha university hospital (Algiers), where he was employed. As he left the hospital with his daughter at around 10 o'clock in the morning, he was ordered to follow two police officers wearing blue vests bearing the word "Police" (in Arabic). He and his daughter were ushered into a car. The victim's daughter was later taken to her father's office in the hospital, and Djaafar Sahbi's co-workers were instructed to accompany her home.

2.2 On 6 July 1995, police officers entered the Sahbi family home when no family members were present. The police broke down the steel door and the interior door of the house, as well as the doors of the bedrooms and closets. They seized Djaafar Sahbi's bag, his family record book and other documents.

2.3 None of the members of his family have seen Djaafar Sahbi or received any news of him since his arrest. In 2007, the security services officially recognized his disappearance but did not accept any responsibility for it. The author provides a copy of the "certificate of disappearance in the context of the national tragedy" issued by the Directorate-General of National Security in Constantine, Ministry of the Interior and Local Authorities, on 12 March 2007.

2.4 In the days following Djaafar Sahbi's arrest, the victim's family, and in particular his brother Youcef Sahbi, engaged in fruitless searches at numerous police stations and looked in vain for him at various prisons. No member of his family has seen him or been able to locate or make contact with him since he was arrested.

2.5 The victim's brother also contacted various judicial, governmental and administrative authorities, but to no avail. On 25 August 1996, he therefore referred the matter to the prosecutor of the Court of El Harrach, the chief prosecutor of the Court of Algiers, the Minister of Justice and the President of the Republic. At no time did any of these authorities conduct an investigation or provide an explanation as to the fate of Djaafar Sahbi.

2.6 The victim's family also sought recourse from the Working Group on Enforced or Involuntary Disappearances of the United Nations. His case was submitted to that body on 19 October 1998. However, the State party, as in other cases of missing Algerian citizens, did not respond to requests for information from this special procedure.

2.7 The author contends that she no longer has the legal right to undertake judicial proceedings, as Ordinance No. 06-01 on implementation of the Charter for Peace and National Reconciliation, which was adopted by referendum on 29 September 2005,

prohibits the taking of any legal action against members of the Algerian defence and security services.

The complaint

3.1 It is claimed that Djaafar Sahbi was the victim of an enforced disappearance on 3 July 1995. The author invokes article 7, paragraph 2 (i), of the Rome Statute of the International Criminal Court and article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.

3.2 As a victim of enforced disappearance, Djaafar Sahbi was prevented from exercising his right to challenge the lawfulness of his detention, in violation of article 2, paragraph 3, of the Covenant. His family pursued all legal avenues to discover the truth about his fate, but nothing came of their efforts.

3.3 The author considered that, as nearly 13 years¹ had passed since her son's disappearance at a secret detention centre, the chances of finding him alive were very slim. Given his prolonged absence and the circumstances and context of his arrest, it seems likely that he died while in custody. Incommunicado detention entails a high risk of violation of the right to life. The threat posed by enforced disappearance to the victim's life constitutes a violation of article 6 of the Covenant insofar as the State has failed in its obligation to protect the fundamental right to life – all the more so since the State party has never made any effort to investigate the fate of the victim.

3.4 As regards the victim, merely being subjected to enforced disappearance constitutes inhuman or degrading treatment. The anguish and suffering caused by indefinite detention without contact with the family or the outside world constitutes treatment in breach of article 7 of the Covenant.

3.5 For the victim's mother — the author of the communication — the disappearance of her son has been a devastating, painful and agonizing ordeal and a violation of her rights under article 7 of the Covenant.

3.6 Djaafar Sahbi was arrested by two police officers who did not have a warrant and who did not inform him of the reasons for his arrest, in violation of article 9, paragraphs 1 and 2, of the Covenant. Furthermore, he was not brought promptly before a judge or other officer authorized by law to exercise judicial power. The time limit for being brought before a judge should not exceed a few days, and incommunicado detention may itself entail a violation of article 9, paragraph 3. As a victim of enforced disappearance, he was not physically able to appeal against the lawfulness of his detention, apply to a judge to obtain his release or even ask a third party to defend him in court, in violation of article 9, paragraph 4.

3.7 If it is established that he has been the victim of a violation of article 7, it cannot be argued that he was ever treated with humanity and with respect for the inherent dignity of the human person in accordance with article 10, paragraph 1, of the Covenant.

3.8 As the victim of an unacknowledged detention, the victim was also reduced to the status of a non-person, in violation of article 16 of the Covenant.

3.9 Lastly, the sole purpose of the house search and the accompanying destruction of property was to harass the victim and his family. There has thus been a violation of article 17, paragraph 1, of the Covenant, with regard to Djaafar Sahbi and his mother.

¹ It has now been 18 years since the victim's disappearance.

State party's observations on admissibility

4.1 On 29 May 2009, the State party contested the admissibility of the communication. It is of the view that this communication, which incriminates public officials or other persons acting on behalf of public authorities in cases of enforced disappearance during the period in question — from 1993 to 1998 — should be examined taking “a comprehensive approach” and should be declared inadmissible. The State party considers that such communications should be placed in the broader context of the sociopolitical and security conditions that prevailed in the country during a period when the Government was struggling to combat a form of terrorism aimed at provoking the “collapse of the Republican State”. In this context, and in accordance with the Constitution (arts. 87 and 91), precautionary measures were implemented, and the Algerian Government informed the Secretariat of the United Nations of its declaration of a state of emergency, in accordance with article 4, paragraph 3, of the Covenant.

4.2 The State party emphasizes that in some areas where there was a proliferation of informal settlements, civilians had trouble distinguishing the actions of terrorist groups from those of the security forces, to which they often attributed enforced disappearances. According to the State party, a large number of enforced disappearances must be considered in this perspective. The concept of disappearance in Algeria during the period in question actually covers six distinct scenarios. The first scenario concerns persons reported missing by their relatives but who in fact had chosen to go into hiding in order to join an armed group and asked their families to report that they had been arrested by the security services, as a way of “covering their tracks” and avoiding being “harassed” by the police. The second scenario concerns persons who were reported missing after their arrest by the security services but who took advantage of their release to go into hiding. The third scenario concerns persons abducted by armed groups which, because they were not identified or because they had stolen uniforms or identification documents from police officers or soldiers, were mistakenly thought to belong to the armed forces or security services. The fourth scenario concerns persons reported missing who abandoned their families, and sometimes even left the country, to escape from personal problems or family disputes. The fifth scenario concerns persons reported missing by their family but who were in fact wanted terrorists who had been killed and buried in the maquis following factional infighting, doctrinal disputes or arguments over the spoils of war among rival armed groups. The sixth scenario mentioned by the State party concerns persons reported missing who were actually living in Algeria or abroad under a false identity provided by a network of document forgers.

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

4.4 The State party further argues that not all domestic remedies have been exhausted. It stresses the importance of distinguishing between simple formalities involving the political or administrative authorities, non-contentious remedies pursued through advisory or mediation bodies, and contentious remedies pursued through the competent courts of

justice. The State party observes that, as may be seen from the author's complaint, she has written letters to political and administrative authorities, petitioned advisory or mediation bodies and petitioned representatives of the prosecution service (chief prosecutors and public prosecutors), but has not, strictly speaking, initiated legal action and seen it through to its conclusion by availing herself of all available remedies of appeal and judicial review. Of all these authorities, only the representatives of the prosecution service are authorized by law to open a preliminary inquiry and refer a case to the investigating judge. In the Algerian legal system, it is the public prosecutor who receives complaints and who, if warranted, institutes criminal proceedings. Nevertheless, in order to protect the rights of victims and their beneficiaries, the Code of Criminal Procedure authorizes the latter to sue for damages in criminal proceedings by filing a complaint with the investigating judge. In this case, it is the victim, not the prosecutor, who initiates criminal proceedings by bringing the matter before the investigating judge. This remedy, which is provided for in articles 72 and 73 of the Code of Criminal Procedure, was not utilized, despite the fact that it would have enabled the author to institute criminal proceedings and compel the investigating judge to launch an investigation, even if the prosecution service had decided otherwise.

4.5 The State party also notes the author's contention that the adoption by referendum of the Charter for Peace and National Reconciliation and its implementing legislation — in particular, article 45 of Ordinance No. 06-01 — rules out the possibility that any effective and available domestic remedies exist in Algeria to which the families of victims of disappearance could have recourse. On this basis, the author believed she did not need to bring the matter before the relevant courts, because of her presumption of the latter's likely position and findings regarding the application of the ordinance. However, the author cannot invoke this ordinance and its implementing legislation as a pretext for failing to institute the legal proceedings available to her. The State party recalls the Committee's jurisprudence to the effect that a person's subjective belief in, or presumption of, the futility of a remedy does not exempt that person from the requirement to exhaust all domestic remedies.²

4.6 The State party then turns its attention to the nature, principles and content of the Charter for Peace and National Reconciliation and its implementing legislation. It maintains that, in accordance with the principle of the inalienability of peace, which has become an international right to peace, the Committee should support and consolidate peace and encourage national reconciliation with a view to strengthening States affected by domestic crises. As part of this effort to achieve national reconciliation, the State party adopted the Charter, and its implementing ordinance prescribes legal measures for the discontinuance of criminal proceedings and the commutation or remission of sentences for any person who is found guilty of acts of terrorism or who benefits from the provisions of the legislation on civil dissent, except for persons who have committed or been accomplices in mass killings, rapes or bombings in public places. This ordinance also helps to address the issue of disappearances by introducing a procedure for filing an official finding of presumed death, which entitles beneficiaries to receive compensation as victims of the "national tragedy". Social and economic measures have also been put in place, including the provision of employment placement assistance and compensation for all persons considered victims of the "national tragedy". Lastly, the ordinance prescribes political measures, such as a ban on holding political office for any person who exploited religion in the past in a way that contributed to the "national tragedy", and establishes the inadmissibility of any proceedings brought against individuals or groups who are members of any branch of Algeria's defence

² The State party cites, in particular, communications Nos.210/1986 and 225/1987, *Pratt and Morgan v. Jamaica*, Views adopted on 6 April 1989.

and security forces for actions undertaken to protect persons and property, safeguard the nation and preserve its institutions.

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

4.8 The State party asks the Committee to note how similar the facts and situations described by the author are and to take into account the sociopolitical and security context in which they occurred; to find that the author failed to exhaust all domestic remedies; to recognize that the authorities of the State party have established a comprehensive domestic mechanism for processing and settling the cases referred to in these communications through measures aimed at achieving peace and national reconciliation that are consistent with the principles of the Charter of the United Nations and subsequent covenants and conventions; to find the communication inadmissible; and to request that the author seek an alternative remedy.

Additional observations by the State party on admissibility

5.1 On 6 October 2010, the State party transmitted a further memorandum to the Committee, in which it raises the question of whether the submission of a series of individual communications might not actually amount to an abuse of procedure aimed at bringing before the Committee a broad historical issue involving causes and circumstances of which the Committee is unaware. The State party observes in this connection that these “individual” communications dwell on the general context in which the disappearances occurred, focusing solely on the actions of the security forces and never mentioning those of the various armed groups that used criminal concealment techniques to incriminate the armed forces.

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

5.3 Recalling the Committee’s jurisprudence regarding the obligation to exhaust domestic remedies, the State party stresses that mere doubts about the prospect of success or concerns about delays do not exempt the author from the obligation to exhaust these remedies. As to the question of whether the promulgation of the Charter for Peace and National Reconciliation has barred the possibility of appeal in this area, the State party replies that the failure by the author to submit her allegations to examination has prevented the Algerian authorities from taking a position on the scope and limitations of the applicability of the Charter. Moreover, under the ordinance in question, the only

proceedings that are inadmissible are those brought against “members of any branch of the defence and security forces of the Republic” for actions consistent with their core duties to the Republic, namely, to protect persons and property, safeguard the nation and preserve its institutions. On the other hand, any allegations concerning actions attributable to the defence or security forces that can be proved to have taken place in any other context are subject to investigation by the appropriate courts.

Author’s comments on the State party’s submission

6.1 On 30 September 2011, the author submitted comments on the State party’s observations on admissibility and provided additional arguments on the merits.

6.2 The author points out that the State party has recognized the competence of the Committee to consider individual communications. This competence is of a general nature and its exercise by the Committee is not subject to the discretion of the State party. In particular, it is not for the State party to determine whether it is appropriate for the Committee to take up a specific case. That is for the Committee to decide when it considers the communication. Referring to article 27 of the Vienna Convention, the author considers that the State party’s adoption of domestic legislative and administrative measures to support the victims of the “national tragedy” cannot be invoked at the admissibility stage to prohibit individuals subject to its jurisdiction from using the procedure provided for under the Optional Protocol.³ In theory, such measures may well have an impact on the settlement of a dispute, but they must be studied with regard to the merits of the case and not to its admissibility. In the present case, the legislative measures adopted amount to a violation of the rights enshrined in the Covenant, as the Committee has previously observed.⁴

6.3 The author recalls that Algeria’s declaration of a state of emergency on 9 February 1992 does not affect the right of persons to submit individual communications to the Committee. Article 4 of the Covenant allows for derogations from certain provisions of the Covenant only during states of emergency, but does not affect the exercise of rights under the Optional Protocol. The author therefore considers that the State party’s observations on the appropriateness of the communication do not constitute a ground for inadmissibility.

6.4 The author again refers to the State party’s argument that the requirement to exhaust domestic remedies calls on the author to institute criminal proceedings by filing a complaint with the investigating judge, in accordance with article 72 et seq. (paras. 25 ff.) of the Code of Criminal Procedure. She refers to the Committee’s recent jurisprudence in the *Benaziza* case, in which it stated in its Views adopted on 27 July 2010 that “the State party has a duty not only to carry out thorough investigations of alleged violations of human rights, particularly enforced disappearances or violations of the right to life, but also to prosecute, try and punish anyone held to be responsible for such violations. To sue for damages for offences as serious as those alleged in the present case cannot be considered a substitute for

³ Article 27 of the Vienna Convention on the Law of Treaties states that “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.”

⁴ The author refers to the concluding observations of the Human Rights Committee concerning the third periodic report of Algeria, CCPR/C/DZA/CO/3, adopted on 1 November 2007, paras. 7, 8 and 13. The author also refers to communication No. 1588/2007, *Benaziza v. Algeria*, Views adopted on 26 July 2010, para. 9.2; and communication No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 11. The author further refers to the concluding observations of the Committee against Torture concerning the third periodic report of Algeria, CAT/C/DZA/CO/3, adopted on 13 May 2008, paras. 11, 13 and 17. Lastly, the author refers to general comment No. 29 on article 4 (derogations during a state of emergency), *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40*, vol. I (A/56/40), annex VI, para. 1.

the charges that should be brought by the public prosecutor.”⁵ The author therefore considers that, given the serious nature of the alleged offences, it was the responsibility of the competent authorities to take up the case. However, no action was taken, even though members of Djaafar Sahbi’s family attempted, from the date of his arrest by Algerian police officers on 3 July 1995, to make enquiries concerning his whereabouts, but to no avail.

6.5 In the days that followed, Djaafar Sahbi's brother, Youcef Sahbi, carried out a fruitless search at numerous police stations. In addition, the family contacted the directors of the Berrouaghia, El Harrach and Serkakji prisons. On 25 August 1996, Djaafar Sahbi's brother referred the matter to the prosecutor of the Court of El Harrach, the chief prosecutor of the Court of Algiers, the Minister of Justice and the President of the Republic. At no time did any of these authorities ever conduct an investigation into the alleged violations. Consequently, the author and her family cannot be reproached for not having exhausted all domestic remedies since it was the State party that failed to carry out the necessary investigations incumbent upon it.

6.6 As to the State party’s argument that mere “subjective belief or presumption” does not exempt the author of a communication from the requirement to exhaust all domestic remedies, the author cites article 45 of Ordinance No. 06-01, whereby legal proceedings may not be brought against individuals or groups who are members of any branch of the defence or security forces. Any person making such a complaint or allegation is liable to a term of imprisonment of 3 to 5 years or a fine of between DA 250,000 and DA 500,000. The State party has therefore neither convincingly demonstrated how suing for damages would have enabled the competent courts to receive and investigate complaints, as that would involve violating article 45 of the ordinance, nor how the author of a complaint could have been guaranteed immunity from prosecution under article 46 of the ordinance. As treaty body jurisprudence confirms, a reading of these provisions leads to the conclusion that any complaint regarding the violations suffered by the author and her son would be not only declared inadmissible, but also treated as a criminal offence. The author notes that the State party fails to provide an example of any case which, despite the existence of the above-mentioned ordinance, has led to the effective prosecution of the perpetrators of human rights violations in similar circumstances. The author concludes that the remedies mentioned by the State party are futile.

6.7 With respect to the merits of the communication, the author notes that the State party has simply listed a number of scenarios according to which the victims of the “national tragedy”, in general, might have disappeared. Such general comments do not refute the allegations made in the present communication. In fact the same comments have been put forward in a number of other cases, which shows the State party’s continuing unwillingness to consider such cases individually.

6.8 With regard to the State party’s argument that it is entitled to request that the admissibility of the communication be considered separately from the merits, the author refers to rule 97, paragraph 2, of the rules of procedure, which permits the Working Group or Special Rapporteur to decide, because of the exceptional nature of the case, to request a written reply relating exclusively to the question of admissibility. Consequently, it is not for the author of the communication or the State party to take such decisions, which are the sole prerogative of the Working Group or Special Rapporteur. The author considers that the present case is no different from other cases of enforced disappearance, and that admissibility should not be considered separately from the merits.

⁵ Communication No. 1588/2007, *Benaziza v. Algeria*, para. 8.3.

6.9 Lastly, the author notes that the State party has not submitted observations on the merits. In the absence of such observations from the State party, the Committee must base its decision on existing information. The allegations made by the author in her communication are corroborated and substantiated by numerous reports on the security forces' actions at the time and by the author's own persistent efforts and those of her family. In view of the State party's involvement in the disappearance of her son, the author is unable to provide additional information in support of her communication, as that information is entirely in the hands of the State party. The author also notes that the lack of any submission from the State party regarding the merits of the case is tantamount to the State party's acknowledgement that violations were committed.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 The Committee recalls that the decision by the Special Rapporteur to examine the admissibility and the merits jointly (see paragraph 1.3 above) does not preclude their being considered separately by the Committee. The joinder of admissibility and merits does not mean they must be examined simultaneously. Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

7.2 Under article 5, paragraph 2 (a), of the Optional Protocol, the Committee must ascertain that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the disappearance of Djaafar Sahbi was reported to the Working Group on Enforced or Involuntary Disappearances on 19 October 1998. However, it recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights Council, and whose mandates are to examine and report publicly on human rights situations in specific countries or territories, or cases of widespread human rights violations worldwide, do not generally constitute an international procedure of investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.⁶ Accordingly, the Committee considers that the examination of Djaafar Sahbi's case by the Working Group on Enforced or Involuntary Disappearances does not render it inadmissible under this provision.

7.3 The Committee notes that, in the State party's view, the author and her family have not exhausted domestic remedies, since they did not consider the possibility of bringing the matter before the investigating judge and suing for damages in criminal proceedings under articles 72 and 73 of the Code of Criminal Procedure. The Committee also notes that, according to the State party, the author has written letters to political and administrative authorities and has petitioned representatives of the prosecution service (chief prosecutors and public prosecutors), but has not, strictly speaking, initiated legal action and seen it through to its conclusion by availing herself of all available remedies of appeal and judicial review. The Committee also takes note of the author's argument that, on 25 August 1996, the victim's brother petitioned the prosecutor of the Court of El Harrach, the chief prosecutor of the Court of Algiers, the Minister of Justice and the President of the Republic. At no time did any of these authorities conduct an investigation into the alleged violations.

⁶ See, inter alia, communication No. 1779/2008, *Mezine v. Algeria*, Views adopted on 25 October 2012, para. 7.2; communication No. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 7.2; and communication No. 540/1993, *Laureano Atachahua v. Peru*, Views adopted on 25 March 1996, para. 7.1.

Lastly, the Committee notes that, according to the author, article 46 of Ordinance No. 06-01 penalizes any person who files a complaint pertaining to actions covered by article 45 thereof.

7.4 The Committee recalls that the State party has a duty not only to carry out thorough investigations of alleged violations of human rights brought to the attention of its authorities, particularly enforced disappearances or violations of the right to life, but also to prosecute, try and punish anyone held to be responsible for such violations.⁷ Although Djaafar Sahbi's family repeatedly contacted the competent authorities concerning his disappearance, the State party failed to conduct a thorough and effective investigation into the disappearance of the author's son, despite the fact that serious allegations of enforced disappearance were involved. The State party has also failed to provide sufficient evidence that an effective remedy is available, since Ordinance No. 06-01 continues to be applied despite the Committee's recommendations that it should be brought into line with the Covenant.⁸ The Committee considers that to sue for damages for offences as serious as those alleged in the present case cannot be considered a substitute for the charges that should be brought by the public prosecutor.⁹ Moreover, given the vague wording of articles 45 and 46 of the ordinance, and in the absence of satisfactory information from the State party about their interpretation and actual enforcement, the author's fears about the effectiveness of filing a complaint are reasonable. The Committee therefore concludes that article 5, paragraph 2 (b), of the Optional Protocol is not an obstacle to the admissibility of the communication.

7.5 The Committee considers that, for a communication to be deemed admissible, the author must have exhausted only the remedies relevant to the alleged violation; in the present case, remedies with respect to enforced disappearance.

7.6 The Committee considers that the author has sufficiently substantiated her claims insofar as they raise issues under articles 6 (para. 1), 7, 9, 10, 16, 17 (para. 1) and 2 (para. 3) of the Covenant, and therefore proceeds to consider the communication on the merits.

Consideration of the merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

8.2 The State party submitted collective and general observations in response to serious allegations by the author, and has been content to argue that communications incriminating public officials, or persons acting on behalf of public authorities, in cases of enforced disappearances between 1993 and 1998 should be considered within the broader context of the sociopolitical and security conditions that prevailed in the country during a period when the Government was struggling to combat terrorism. The Committee recalls its jurisprudence, according to which the State party may not invoke the provisions of the Charter for Peace and National Reconciliation against persons who invoke provisions of the Covenant or who have submitted or may submit communications to the Committee. The

⁷ See, inter alia, communication No. 1779/2008, *Mezine v. Algeria*, para. 7.4; communication No. 1781/2008, *Berzig v. Algeria*, para. 7.4; and communication No. 1905/2009, *Khirani v. Algeria*, Views adopted on 26 March 2012, para. 6.4.

⁸ Concluding observations of the Human Rights Committee concerning the third periodic report of Algeria, CCPR/C/DZA/CO/3, paras. 7, 8 and 13.

⁹ Communication No. 1779/2008, *Mezine v. Algeria*, para. 7.4; communication No. 1588/2007, *Benaziza v. Algeria*, para. 8.3; communication No. 1781/2008, *Berzig v. Algeria*, para. 7.4; and communication No. 1905/2009, *Khirani v. Algeria*, para. 6.4.

Covenant demands that the State party concern itself with the fate of every individual and treat every individual with respect for the dignity inherent in every human being. Ordinance No. 06-01, without the amendments recommended by the Committee, appears to promote impunity and therefore cannot, as it currently stands, be considered compatible with the provisions of the Covenant.

8.3 The Committee notes that the State party has not replied to the author's claims concerning the merits of the case and recalls its jurisprudence¹⁰ according to which the burden of proof should not rest solely on the author of a communication, especially given that the author and the State party do not always have the same degree of access to evidence and that often only the State party is in possession of the necessary information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has a duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with whatever information is available to it.¹¹ In the absence of any explanations from the State party in this respect, due weight must be given to the author's allegations, provided they have been sufficiently substantiated.

8.4 The Committee notes that, according to the author, her son, Djaafar Sahbi, was arrested on 3 July 1995 at around 10 o'clock in the morning by two uniformed police officers at the exit of the hospital where he worked, and the victim's daughter was present at the time of his arrest. It further notes that, according to the author, such a disappearance entails a high risk to the victim's right to life and that his prolonged absence and the circumstances and context of his arrest lead to the conclusion that it seems likely that he died while in custody. The Committee notes that the State party has produced no evidence refuting the author's allegation. The Committee recalls 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. In the present case, the Committee notes that the State party has produced no evidence to indicate that it has fulfilled its obligation to protect Djaafar Sahbi's life. Therefore the Committee concludes that the State party has failed in its duty to protect Djaafar Sahbi's life, in violation of article 6, paragraph 1, of the Covenant.¹²

8.5 The Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its general comment No. 20 (1992) on article 7,¹³ which recommends that States parties should make provision to ban incommunicado detention. It notes in the present case that Djaafar Sahbi was arrested by the police on 3 July 1995 and that his fate is still unknown. In the absence of a satisfactory explanation from the State party, the Committee considers that this disappearance constitutes a violation of article 7 of the Covenant with regard to Djaafar Sahbi.¹⁴

¹⁰ See, inter alia, communication No. 1779/2008, *Mezine v. Algeria*, para. 8.3; communication No. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, Views adopted on 26 July 2010, para. 7.4; and communication No. 1781/2008, *Berzig v. Algeria*, para. 8.3.

¹¹ See communication No. 1779/2008, *Mezine v. Algeria*, para. 8.3; and communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.3.

¹² See communication No. 1779/2008, *Mezine v. Algeria*, para. 8.4.

¹³ *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40, (A/47/40)*, annex VI, sect. A.

¹⁴ See communication No. 1779/2008, *Mezine v. Algeria*, para. 8.5; communication No. 1905/2009, *Khirani v. Algeria*, para. 7.5; communication No. 1781/2008, *Berzig v. Algeria*, para. 8.5; communication No. 1295/2004, *El Awani v. Libyan Arab Jamahiriya*, Views adopted on 11 July 2007, para. 6.5.

8.6 The Committee also takes note of the anguish and distress caused to the author by the disappearance of Djaafar Sahbi. It considers that the facts before it disclose a violation of article 7 of the Covenant with regard to her.¹⁵

8.7 With regard to the alleged violation of article 9, the Committee notes the author's claim that Djaafar Sahbi was arrested on 3 July 1995 by two uniformed police officers; that he was not charged and was not brought before a judicial authority, which would have enabled him to challenge the lawfulness of his detention; and that no official information was given to his family regarding Djaafar Sahbi's whereabouts or his fate, despite the fact that the authorities certified that his disappearance had occurred "in the context of the national tragedy".¹⁶ In the absence of satisfactory explanations from the State party, the Committee finds a violation of article 9 with regard to Djaafar Sahbi.¹⁷

8.8 Regarding the complaint under article 10, paragraph 1, the Committee reiterates that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated with humanity and respect for their dignity. In view of Djaafar Sahbi's incommunicado detention and in the absence of information provided by the State party in that regard, the Committee finds a violation of article 10, paragraph 1, of the Covenant.¹⁸

8.9 With regard to the alleged violation of article 16, the Committee reiterates its established jurisprudence, according to which the intentional removal of a person from the protection of the law for a prolonged period of time may constitute a refusal to recognize that person as a person before the law if the victim was in the hands of the State authorities when last seen and if the efforts of his or her relatives to obtain access to potentially effective remedies, including judicial remedies (article 2, paragraph 3, of the Covenant), have been systematically impeded.¹⁹ In the present case, the Committee notes that the State party has not furnished any explanation concerning the fate or whereabouts of Djaafar Sahbi, despite the multiple requests addressed by the author to the State party. The Committee concludes that Djaafar Sahbi's enforced disappearance nearly 18 years ago 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.

8.10 With regard to the alleged violation of article 17, the Committee notes that the State party did not provide any justification or clarification as to the entry of officials into the

¹⁵ See communication No. 1779/2008, *Mezine v. Algeria*, para. 8.6; communication No. 1905/2009, *Khirani v. Algeria*, para. 7.6; communication No. 1781/2008, *Berzig v. Algeria*, para. 8.6; communication No. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, para. 7.5; and communication No. 1422/2005, *El Hassy v. Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 6.11.

¹⁶ See para. 2.3 above.

¹⁷ See, inter alia, communication No. 1779/2008, *Mezine v. Algeria*, para. 8.7; communication No. 1905/2009, *Khirani v. Algeria*, para. 7.7; and communication No. 1781/2008, *Berzig v. Algeria*, para. 8.7.

¹⁸ See general comment No. 21 (1992) on article 10, *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40, (A/47/40, annex VI, sect. B, para. 3*; and communication No. 1779/2008, *Mezine v. Algeria*, para. 8.8; communication No. 1780/2008, *Zarzi v. Algeria*, Views adopted on 22 March 2011, para. 7.8; and communication No. 1134/2002, *Gorji-Dinka v. Cameroon*, Views adopted on 17 March 2005, para. 5.2.

¹⁹ See communication No. 1779/2008, *Mezine v. Algeria*, para. 8.9; communication No. 1905/2009, *Khirani v. Algeria*, para. 7.9; communication No. 1781/2008, *Berzig v. Algeria*, para. 8.9; communication No. 1780/2008, *Zarzi v. Algeria*, para. 7.9; communication No. 1588/2007, *Benaziza v. Algeria*, para. 9.8; communication No. 1327/2004, *Grioua v. Algeria*, Views adopted on 10 July 2007, para. 7.8; and communication No. 1495/2006, *Madaoui v. Algeria*, Views adopted on 28 October 2008, para. 7.7.

Sahbi family home without a warrant and when no member of the family was present, and as to their confiscation of important personal documents belonging to Djaafar Sahbi, such as his family record book. The Committee concludes that the entry of officials into the Sahbi family home in such circumstances constitutes unlawful interference with their home, in violation of article 17 of the Covenant.²⁰

8.11 The author invokes article 2, paragraph 3, of the Covenant, which imposes on States parties the obligation to ensure an effective remedy for all persons whose Covenant rights have been violated. The Committee attaches importance to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of rights violations. It refers to its general comment No. 31 (2004),²¹ in which it indicates in particular that the failure by a State party to investigate allegations of violations may in itself give rise to a separate breach of the Covenant. In the present case, although the victim's family repeatedly contacted the competent authorities regarding Djaafar Sahbi's disappearance, including the prosecutor of the Court of El Harrach and the chief prosecutor of the Court of Algiers on 25 August 1996, all their efforts led to nothing, and the State party failed to conduct a thorough and effective investigation into the disappearance of the author's son. Furthermore, the absence of the legal right to undertake judicial proceedings since the promulgation of Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation continues to deprive Djaafar Sahbi, the author and her family of any access to an effective remedy, since the ordinance prohibits, on pain of imprisonment, the initiation of legal proceedings to shed light on the most serious crimes, such as enforced disappearances.²² The Committee concludes that the facts before it reveal a violation of article 2 (para. 3), read in conjunction with articles 6 (para. 1), 7, 9, 10 (para. 1), 16 and 17 of the Covenant, with regard to Djaafar Sahbi, and of article 2 (para. 3), read in conjunction with articles 7 and 17 of the Covenant, with regard to the author.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses violations by the State party of articles 6 (para. 1), 7, 9, 10 (para. 1), 16 and 17 of the Covenant and of article 2 (para. 3), read in conjunction with articles 6 (para. 1), 7, 9, 10 (para. 1), 16 and 17 of the Covenant, with regard to Djaafar Sahbi. The information also discloses a violation of articles 7 and 17 and of article 2 (para. 3), read in conjunction with articles 7 and 17 of the Covenant, with regard to the author.

10. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author and her family with an effective remedy, including by: (a) conducting a thorough and effective investigation into the disappearance of Djaafar Sahbi; (b) providing the author and her family with detailed information about the results of its investigation; (c) releasing him immediately if he is still being detained incommunicado; (d) in the event that Djaafar Sahbi is deceased, handing over his remains to his family; (e) prosecuting, trying and punishing those responsible for the violations committed; and (f) providing adequate compensation to the author for the violations suffered and to Djaafar Sahbi, if he is still alive. Notwithstanding the terms of Ordinance No. 06-01, the State party should ensure that it does not impede enjoyment of the right to an effective remedy for crimes such as torture, extrajudicial killings and enforced disappearances. The State party is also under an obligation to prevent similar violations in the future.

²⁰ Communication No. 1779/2008, *Mezine v. Algeria*, para. 8.10.

²¹ *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40, vol. I (A/59/40 (Vol. I)), annex III.*

²² CCPR/C/DZA/CO/3, para. 7.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there was 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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

[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.]

Appendix

Individual opinion (partially dissenting) of Mr. Víctor Manuel Rodríguez Rescia

1. This individual opinion relates to the decision of the Human Rights Committee on communication No. 1791. I support the Committee's findings of a violation of the rights established in articles 6 (para. 1), 7, 9, 10 (para. 1), 16 and 17, and in article 2 (para. 3) read in conjunction with articles 6 (para. 1), 7, 9, 10 (para. 1), 16 and 17 of the Covenant, in respect of Djaafar Sahbi, and in articles 7, 17 and 2 (para. 3) read in conjunction with articles 7 and 17 of the Covenant, in respect of the author.

2. However, I only partially agree with the Committee in connection with its decision regarding the effects of Ordinance No. 06-01 of 27 February 2006 — and notably article 45 — promulgating the Charter for Peace and National Reconciliation, and its application. The ordinance was approved by referendum on 29 September 2005 and prohibits any legal action against members of the Algerian defence and security services for such offences as torture, extrajudicial killings and enforced disappearance. Under this ordinance anyone making a complaint or allegation of this kind is liable to a penalty of 3 to 5 years' imprisonment and a fine of 250,000 to 500,000 Algerian dinars.

3. The existence per se of the part of this ordinance that allows anyone making allegations of this kind to be sentenced to imprisonment and a fine is contrary to the International Covenant on Civil and Political Rights because it establishes a framework of impunity for those who commit serious human rights violations, including situations of enforced disappearance such as that of Djaafar Sahbi, whose whereabouts are still unknown today, allowing them to avoid prosecution, penalties and the need to provide compensation.

4. It is true that the Committee found that the application of the ordinance provides for some redress. However, the measures it recommends to ensure that the ordinance will not be applied in similar cases in the future, are insufficient. The Committee has issued a general statement that the State should not impede "enjoyment of the right to an effective remedy for crimes such as torture, extrajudicial killings and enforced disappearances" and should "take steps to prevent similar violations in the future" (para. 10). I believe that the Committee should have stated clearly and directly that the explicit prohibition under Ordinance No. 06-01 of legal action to initiate investigations of cases of torture, extrajudicial killing and enforced disappearance of persons is a violation of the general obligation under article 2, paragraph 2, of the Covenant, according to which the State party must, "where not already provided for by existing legislative or other measures, ... take the necessary steps, in accordance with its constitutional processes and with the provisions of the ... Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant".

5. For the undersigned, the relevant part of the ordinance has *erga omnes* effects and sends a message of impunity that prevents the victims of serious offences of this kind, and their families, from exercising their right to an effective legal remedy, to know the truth, to assert their human right to justice and petition and to obtain full reparation. Even acknowledging the positive contribution of the remaining provisions of Ordinance No. 06-01 to an agreement on peace and national reconciliation in Algeria, this should not be at the expense of the fundamental human rights of the victims and their families who have suffered the consequences of serious offences; still less should such persons be liable to penalties and sanctions that victimize them once again for exercising their right to invoke a legal remedy — one of the very remedies, in fact, that are supposed to guarantee and protect

those human rights that may not be suspended even in a state of emergency (Covenant, art. 4, para. 2).

6. The author, referring to the relevant provisions of Ordinance No. 06-01, has explicitly stated that “the legislative measures adopted amount to a violation of the rights enshrined in the Covenant” (para. 6.2, final sentence). The undersigned is in full agreement with the author; that opinion is also consistent with previous decisions of the Committee (concluding observations of the Human Rights Committee concerning the third periodic report of Algeria, CCPR/C/DZA/CO/3, adopted on 1 November 2007, paras. 7, 8 and 13; it is also in line with communications Nos. 1588/2007, *Benaziza v. Algeria*, Views adopted on 26 July 2010, para. 9.2, and 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 11).

7. The fact that recourse to the courts is legally impossible since the promulgation of Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation has deprived and continues to deprive Djaafar Sahbi, the author and the family of all access to an effective remedy, since the ordinance prohibits, on pain of imprisonment, applications to the courts to cast light on the most serious of offences, such as enforced disappearance. Based on the Committee’s finding that the facts before it reveal a violation of article 2, paragraph 3, read in conjunction with articles 6 (para. 1), 7, 9, 10 (para. 1), 16 and 17 of the Covenant, in respect of Djaafar Sahbi, and of article 2, paragraph 3, read in conjunction with articles 7 and 17 of the Covenant, in respect of the author, the Committee ought to have stated explicitly that, in accordance with its international obligation to bring its national legislation into line with the protection provisions of the Covenant, the State party should comply with the provisions of article 2, paragraph 2, by taking legislative or other measures to suspend or abrogate the impediments, penalties, sanctions and any other obstacle liable to create impunity for serious offences such as enforced disappearance of persons, torture and extrajudicial killing, not only for the victims referred to in this communication but also for victims and families in similar cases.

[Done in English, French and Spanish, the Spanish 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.]

Individual opinion (concurring) of Committee member Mr. Fabián Omar Salvioli

1. I agree with the Committee's decision in this case (communication No. 1791/2008, *Boudjemai v. Algeria*) but in my opinion the Committee's reasoning on the application of article 2 of the International Covenant on Civil and Political Rights is not correct, and indeed warrants thorough debate. In the Sahbi case the Committee should have found that the State party was in breach of article 2, paragraph 2, of the Covenant. It is also my view that the Committee should have stated that, in its opinion, the State party should amend articles 45 and 46 of Ordinance No. 06-01 in order to guarantee that such incidents do not occur again.

2. The Committee must apply the law to the proven facts regardless of the particular legal claims made by the parties. This is not a matter of discretion, but something it must do in order to properly carry out its task in accordance with the principle of *iura novit curia*. I have already stated my position in this regard and refer to my legal arguments and grounds so as not to repeat them here.¹

3. The Committee has hitherto maintained that it is not possible for it to find a separate violation of article 2 of the Covenant in an individual communication. However, even if that were the case — which is debatable — the Committee has on hundreds of occasions, including in its Views on the present case, found a violation of article 2, paragraph 3, in connection with, or read in conjunction with, other articles of the Covenant.

4. Why can the same logic not be applied to article 2, paragraph 2, of the Covenant? The Committee insists on not looking at article 2, paragraph 2, when considering individual communications, without citing any reasonable grounds for such a position.

5. Under article 2, paragraph 2, of the Covenant, "Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant." Obviously, if a State party adopts a rule at variance with this provision, it is violating the provision.

6. The author in this case states in no uncertain terms that no recourse to justice was possible owing to the existence of Ordinance No. 06-01 (Views, paras. 2.7 and 6.6). According to articles 45 and 46 of that ordinance, in cases of enforced disappearance such as this one, legal proceedings may not be brought against individuals or groups who are members of any branch of the defence or security forces, and any person making such a complaint or allegation is liable to a term of imprisonment of 3 to 5 years or a fine of between 250,000 and 500,000 Algerian dinars.

7. In individual opinions in other similar cases involving Algeria, I have explained the reasons why the Committee ought to address the incompatibility of Ordinance No. 06-01 with the Covenant in light of article 2, paragraph 2, and why its application to the victims is a violation of that provision of the Covenant in each particular case.² My arguments apply in this case too: in this communication, the Committee is fully empowered to set the legal

¹ *Anura Weerawansa v. Sri Lanka*, communication No. 1406/2005; Views adopted on 17 March 2009; partially dissenting opinion of Committee member Mr. Fabián Omar Salvioli, paras. 3–5.

² Human Rights Committee, *Chihoub v. Algeria*, communication No. 1811/2008; Views adopted on 31 October 2011; individual opinion (concurring) of Committee member Mr. Fabián Omar Salvioli, joined by Mr. Cornelis Flinterman, paras. 5–10.

framework for consideration of the facts before it, as on 27 February 2006 the State party adopted Ordinance No. 06-01, prohibiting all recourse to the courts to shed light on the most serious offences such as enforced disappearance; the effect of this ordinance is to provide impunity for serious human rights violations, and the author, Hafsa Boudjemai, complains that she was unable to take legal action because of it.

8. In enacting this legislation, the State party adopted a provision that runs counter to the obligation established in article 2, paragraph 2, of the Covenant. That in itself is a violation that the Committee should have mentioned in its decision.

9. Even if the Committee believes that a violation of article 2 can be found only in connection with another provision of the Covenant, the finding in this case should have been a violation of article 2, paragraph 2, in connection with, or read in conjunction with, articles 6, 7, 9, 10 and 16 of the Covenant.

10. Consequently, the Committee should have established that, as reparation, Ordinance No. 06-01 should be made to comply with the international obligations of the State party through the amendment of articles 45 and 46, which are inherently incompatible with the Covenant.

[Done in English, French and Spanish, the Spanish 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.]
