

Algeria found liable for rights violated during Civil War

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The Human Rights Committee found that Algeria violated its obligations under the International Covenant on Civil and Political Rights in the case of the enforced disappearance of an individual during the Algerian Civil War.



Faraoun v Algeria (1884/2009)

Summary

In October 2013, the Human Rights Committee was asked to consider whether an individual's enforced disappearance during the Algerian Civil War constituted a violation by Algeria of its obligations under the International Covenant on Civil and Political Rights.

The communication was submitted by three Algerian nationals under the Optional Protocol to the Covenant, on behalf of both themselves and the victim of the enforced disappearance, Mr Farid Faraoun (the authors' husband, father and son respectively).

Background

Mr Faraoun was a farmer in the Sidi-Bel-Abbès region. On 11 February 1997, he was arrested at his home by armed police agents, without any warrant. He was taken to the police station and never seen again.

On the same day, the police destroyed Mr Faraoun's family's farm. The next day, the police forced his wife and four children out of their home of 17 years, which was then also destroyed.

On 12 February 1997, Mr Faraoun's wife was able to meet secretly with a member of the army, who told her that her husband had been tortured. However, he advised her not to take any further action for fear of retaliation. In the following months, the family received information from various sources, according to which Mr Faraoun had been badly injured and had been seen in two different military hospitals.

From July 1997 to August 2006, the authors made numerous requests to the Algerian authorities to open an inquiry into Mr Faraoun's disappearance. Despite these requests, the authors had been unable to obtain any further information concerning his fate or whereabouts. Furthermore, since the implementation in 2006 of the Charter for Peace and National Reconciliation (the *Charter*), the authors had been prohibited from taking legal action in the Algerian courts for crimes committed during the Civil War.

On 7 July 2008, the authors filed this communication with the Committee under the Optional Protocol to the Covenant. The authors claimed that Algeria had violated its obligation to provide the authors with an effective remedy under article 2(3) of the Covenant, with respect to Mr Faraoun's rights to: (i) life; (ii) freedom from

torture and cruel or degrading treatment; (iii) liberty and security of the person; (iv) humanity and respect for the inherent dignity of the human person; (v) recognition as a person before the law; (vi) freedom from arbitrary or unlawful interference with private life; and (vii) protection of the family (under articles 6, 7, 9, 10(1), 16, 17 and 23(1) of the Covenant respectively). The authors also claimed a violation of their own rights under article 2(3), with respect to articles 7, 17 and 23(1) of the Covenant.

The Committee's decision

Regarding the admissibility of the claims, the Committee rejected Algeria's argument that the authors had not exhausted domestic remedies. The Committee found that, notwithstanding their fear of retaliation, the authors had made numerous requests to the authorities to investigate Mr Faraoun's disappearance. Though the authors had not launched criminal proceedings in Algeria, the implementation of the Charter made any legal action impossible and the authors were entitled to doubt the effectiveness of such remedy. Moreover, it was the State's duty to initiate investigations and proceedings for such serious crimes. The Committee therefore concluded that all effective remedies had been exhausted and that nothing barred the admissibility of the claims.

On the merits, the Committee held that Algeria was not entitled to rely on the general context of the Civil War and the fight against terrorism to avoid the obligations it owed to each individual. The Committee also recalled its previous finding that the order implementing the Charter was contrary to the Covenant as it promoted impunity. With respect to each claim, the Committee noted that Algeria had not adduced any information to contradict the facts alleged by the authors.

The Committee observed that Mr Faraoun's enforced disappearance had put his life at serious and constant risk. It noted Mr Faraoun's incommunicado detention and physical torture and recalled its General Comment No. 20 in which it recommended that State parties make provision against such detention. The Committee considered that the entry of government agents into the home of Mr Faraoun and his family and the subsequent destruction of their farm and home constituted an interference with private life. It also noted the mental torture and intimidation of his family, particularly when they were forced to watch the destruction of their home and were left in a critical financial condition.

The Committee considered that Algeria had failed to provide appropriate judicial and administrative mechanisms for addressing the authors' claims, and that its failure to investigate allegations of violations was itself a violation of the Covenant.

In light of the above, the Committee found Algeria to have breached article 2(3) of the Convention, both read alone and in conjunction with articles 6(1), 7, 9, 10(1), 16 and 17, with regard to Mr Faraoun. The Committee also noted the anguish and distress caused to the authors by Mr Faraoun's disappearance and the destruction of their family home, and considered that Algeria had violated article 2(3) with regard to the authors' rights under article 7 and 17 of the Covenant. Given its findings in relation to article 17, the Committee did not consider it necessary to examine the authors' claims under article 23(1).

In accordance with article 2(3), Algeria was under an obligation to provide the authors with an effective remedy by, among other things:

- a. conducting thorough and impartial investigations into the disappearance of Mr Faraoun and informing his family of the results;
- b. releasing Mr Faraoun immediately if he is still detained incommunicado;
- c. handing over his remains if he is deceased;
- d. prosecuting, trying and punishing those responsible for the violations committed; and
- e. providing adequate compensation to the authors and Mr Faraoun if he is still alive.

The Committee also held that Algeria must take steps to prevent similar violations in the future.

Algeria must now submit its written response within six months of the Committee's decision, including information on the action taken in light of the Committee's recommendations, and ensure that the Committee's decision is published widely.

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Photo: UN Photo/Jean-Marc Ferré. Palais Wilson. 2010.

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