



## International Covenant on Civil and Political Rights

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### Human Rights Committee

100th session

11–29 October 2010

### Views

#### Communication No. 1751/2008

<i>Submitted by:</i>	Dr. Adam Hassan Aboussedra (represented by Al Karama for Human Rights)
<i>Alleged victim:</i>	Dr. Mohamed Hassan Aboussedra (brother of the above), Selma Younès (wife of the victim), and T.A. and A.A. (the two children of the victim)
<i>State party:</i>	Libyan Arab Jamahiriya
<i>Date of communication:</i>	10 October 2007 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 22 January 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	25 October 2010
<i>Subject matter:</i>	Enforced disappearance of a person detained for 20 years
<i>Procedural issues:</i>	State failure to cooperate
<i>Substantive issues:</i>	Right to life, prohibition of torture and cruel and inhuman treatment, right to liberty and security of person, respect for the inherent dignity of the human person, right to a fair trial, recognition as a person before the law
<i>Articles of the Covenant:</i>	Article 2, paragraph 3; article 6, paragraph 1; article 7; article 9, paragraphs 1 to 4; article 10, paragraph 1; article 14, paragraphs 1 and 3 (a) to (d); and article 16

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

*Articles of the Optional Protocol:* Article 5, paragraph 2 (a) and 2 (b)

On 25 October 2010, the Human Rights Committee adopted the annexed text as its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1751/2008.

[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 (100th session)**

concerning

#### **Communication No. 1751/2008\***

*Submitted by:* Dr. Adam Hassan Aboussedra (represented by Al Karama for Human Rights)

*Alleged victim:* Dr. Mohamed Hassan Aboussedra (brother of the above), Selma Younès (wife of the victim), and T.A. and A.A. (the two children of the victim)

*State party:* Libyan Arab Jamahiriya

*Date of communication:* 10 October 2007 (initial submission)

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

*Meeting* on 25 October 2010,

*Having concluded* its consideration of communication No. 1751/2008, submitted by Dr. Adam Hassan Aboussedra 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,

*Adopts* the following:

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

1. The author of the communication, dated 10 October 2007, is Dr. Adam Hassan Aboussedra, a Libyan national born in 1959 currently residing in Benghazi in the Libyan Arab Jamahiriya. Dr. Aboussedra has submitted the communication on behalf of his brother, Dr. Mohamed Hassan Aboussedra, and also the victim's wife, Selma Younès, and two children, T.A. and A.A. The author maintains that his brother is a victim of violations by the Libyan Arab Jamahiriya of article 2, paragraph 3; article 6, paragraph 1; article 7; article 9, paragraphs 1 to 4; article 10, paragraph 1; and article 16 of the Covenant. He is represented by the non-governmental organization Al Karama for Human Rights. The

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanut, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

Covenant and its Optional Protocol entered into force for the Libyan Arab Jamahiriya on 15 August 1970 and 16 August 1989 respectively.

### **The facts as presented by the author**

2.1 The author, Dr. Adam Hassan Aboussedra, is the brother of Mohamed Hassan Aboussedra, a medical doctor and biologist living in Al Bayda (Libyan Arab Jamahiriya), who is married to Selma Younès and has two children, T.A. and A.A. He states that Dr. Mohamed Hassan Aboussedra (the “victim”) was arrested by the internal security forces at his home during the night of 19 January 1989, without being shown a warrant or being informed of the grounds for his arrest. The author maintains that he and his three other brothers were also arrested in the same circumstances as the victim. All five were detained incommunicado in different places for a period of three years, during which time their parents received no further news of them.

2.2 All attempts on the part of the father, Mr. Hassan Salah Aboussedra, to ascertain what had happened to his sons and where they were being held proved fruitless, and it was not until April 1992 that he learned that his five sons were still alive and were all being held in Abu Salim prison in Tripoli. He and his wife were thus able to visit their sons for the first time in April 1992. During these visits, the father learned that his five children had been tortured, that none of them had been brought before the courts, and that no judicial proceedings had been initiated against them. Furthermore, none of them knew the reasons for their detention.

2.3 On 2 March 1995, after six years of incarceration, the victim’s four brothers were released, without ever having appeared in court or had any judicial proceedings brought against them. However, Dr. Mohamed Hassan Aboussedra continued to be detained without judicial process, without access to legal counsel and without being able to challenge the lawfulness of his detention. After the events at Abu Salim prison on 28 and 29 June 1996, when several hundred prisoners were killed in their cells, the victim had been chosen by his co-detainees to serve as a go-between in their attempts to persuade the authorities to cease using force against them. It is alleged that his role in these events made him the subject of serious threats from senior officers who were present, and that thereafter the conditions of his detention worsened considerably. For several years Mohamed Hassan Aboussedra was again completely cut off from the outside world, without family visits or any possibility of contact with a lawyer.

2.4 Before his death in 2003, the victim’s father had tried in vain to ascertain whether his son was still alive or had been one of the victims of the events of June 1996. Initially, he approached the prison authorities — first in summer 1996 and on several occasions thereafter — but failed to obtain any news of his son. He also approached a number of popular committees,<sup>1</sup> likewise without success. He also endeavoured to appoint a legal counsel to initiate legal proceedings but all the lawyers he contacted advised him to attempt to resolve the issue amicably with the authorities. They also reportedly informed him that it would not in any case be possible either to file a complaint or to initiate any judicial process.

2.5 It was not until 2004, 15 years after his arrest, that Mohamed Hassan Aboussedra was brought before a court for the first time. The court in question — the People’s Court in Tripoli, a special court with jurisdiction to hear political cases<sup>2</sup> — sentenced him to life

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<sup>1</sup> Local executive committees, which report to the General People’s Congress (Parliament) and to the different General People’s Committees (ministries).

<sup>2</sup> According to the author, numerous NGOs working to defend human rights had criticized this court for its unfair judgements.

imprisonment.<sup>3</sup> According to the author, the hearing was not public and the victim's family was not informed of the trial date. Mohamed Hassan Aboussedra was never given access to his criminal file and was not informed of the charges against him. He was not permitted to appoint a lawyer of his choosing, either in person or through the intermediary of his family. Furthermore, in the course of his trial, no precise facts of a criminal nature were charged against him. He was simply questioned about his political beliefs and sentenced on that basis.

2.6 After lodging an appeal against this decision, Mohamed Hassan Aboussedra was retried on 2 June 2005, again behind closed doors but this time before an ordinary court, the People's Court having been abolished in January of that year. This time he was sentenced to 10 years' imprisonment, a sentence he had long since served as he had already been detained for 16 years. The presiding judge thus ordered his immediate release.

2.7 While his family were waiting for him to be released, they learned from former detainees of the same prison that Mohamed Hassan Aboussedra had been removed from Abu Salim prison by officers of the internal security forces on 9 June 2005. Despite making a number of further inquiries of the court and various authorities, they were unable to ascertain why he had been transferred or where he had been taken. It was only through a telephone call from the Gaddafi International Charity and Development Foundation, which the author had approached for assistance, that the family learned that their son was "on the list of persons awaiting release".

2.8 On 31 January 2007, the family learned that Mohamed Hassan Aboussedra was being detained incommunicado at the headquarters of the internal security forces in Tripoli, that the conditions of his detention were deplorable, and that he had been subjected to torture for several months, to the extent that his life was apparently in danger. On the same day, the family filed an urgent appeal to the Working Group on Enforced Disappearance, the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, asking them to intervene with the Libyan authorities in order to secure his release.

2.9 The author adds that, on 30 January 2007, his counsel also wrote to the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations Office and other international organizations at Geneva about his brother's case. His counsel received a response on 20 February 2007, advising him that the communication "had been duly forwarded to the relevant Libyan authorities in order to obtain clarification".

2.10 The family were left without news until the last week of January 2009, when they received authorization to visit him in prison. They made two visits, on 31 January 2009 and 4 March 2009.

2.11 On 7 June 2009, more than 20 years after his arrest, Mohamed Hassan Aboussedra was released. However, he was forbidden to leave Tripoli.<sup>4</sup> In spite of the victim's release, the author's legal counsel has been expressly authorized to pursue the case before the Committee.<sup>5</sup>

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<sup>3</sup> The author alleges that he does not know the exact date of the decision.

<sup>4</sup> The author states that he does not know whether this prohibition continues to apply.

<sup>5</sup> Communication from the author's counsel to the Committee dated 8 September 2010.

**The complaint**

3.1 The author alleges that the facts supporting his petition demonstrate that his brother was a victim of enforced disappearance<sup>6</sup> from the time of his initial arrest on 19 January 1989 until April 1992,<sup>7</sup> and from 9 June 2005<sup>8</sup> until his release on 7 June 2009. According to the author, his brother's arrest by the State party's security agents was followed by a refusal to acknowledge the deprivation of liberty and concealment of the fate he had suffered. Whereas he should have been released following the judgement issued on 2 June 2005, instead he was removed by agents of the State from an official place of detention, the Abu Salim prison.

3.2 The author maintains that, as a victim of enforced disappearance, his brother was prevented de facto from exercising his right of appeal to challenge the lawfulness of his detention. His family did everything in their power to ascertain the truth about what had happened to him but the State party failed to respond to their inquiries. In so doing, the State party violated article 2, paragraph 3, of the Covenant in relation to Mohamed Hassan Aboussedra and in relation to his wife and their two children.

3.3 The author also asserts that the enforced disappearance of his brother constituted in itself a serious threat to his right to life, which gave his family legitimate grounds to fear for his life. Even though the State party had been officially notified of the disappearance of Mohamed Hassan Aboussedra, the petitions that the family submitted to both the prison authorities and the popular committees, between the time of his arrest in 1989 and his release 20 years later, met with no response. Referring to the Committee's general comment on article 6, the author maintains that the serious threat to his brother's right to life that resulted from his enforced disappearance is a violation by the State party of article 6, paragraph 1, of the Covenant.

3.4 The author further maintains that his brother's enforced disappearance constitutes inhuman or degrading treatment, in violation of article 7 of the Covenant. The victim was subjected to torture for several months following his arrest, as he himself informed his family at the time of their first visit to Abu Salim prison in April 1992. According to witness reports received by the family, he was subjected to further torture at the security forces headquarters in Tripoli following his transfer from Abu Salim prison on 9 June 2005.

3.5 For his wife, Selma Younès, and his two children, T.A. and A.A., the victim's disappearance was a frustrating, painful and stressful ordeal inasmuch as they had no information whatsoever concerning his fate for the first three years of his detention, then had to wait a further 15 years (until 31 January 2007) before learning that he was being held at the internal security forces' headquarters, and then a further two years before they were permitted to visit him in 2009, shortly before his release. At no time during the 20 intervening years did the authorities take the trouble to inform his brother's wife and children of his whereabouts, in order to alleviate their suffering. The author claims that in so doing the State party acted in violation of article 7 of the Covenant in respect of the victim's wife and children.

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<sup>6</sup> The author refers to the definition of "enforced disappearance" contained in article 7, paragraph 2 (i) of the Rome Statute of the International Criminal Court, and in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>7</sup> The date on which the victim's father reportedly learned that his sons (including the victim) were alive and detained in Abu Salim prison (see supra, para. 2.2).

<sup>8</sup> The date on which the victim was reportedly removed from Abu Salim prison by officers of the internal security forces after being sentenced to 10 years' imprisonment (see supra, para. 2.7).

3.6 With regard to article 9 of the Covenant, the author notes firstly that his brother was arrested by the internal security forces without a warrant and without being informed of the grounds for his arrest, in violation of the guarantees set forth in article 9, paragraphs 1 and 2, of the Covenant. He was then arbitrarily detained and held incommunicado from the time of his arrest on 19 January 1989 until April 1992, and continued to be held incommunicado until his release on 7 June 2009, despite a court order for his release on 2 June 2005, which is a further violation of the guarantees established in article 9, paragraph 1, of the Covenant. The author reiterates that his brother was not brought before a judge until 15 years after his arrest, in blatant violation of the right to be brought promptly before a judge or other officer authorized by law to exercise judicial power, guaranteed under article 9, paragraph 3.

3.7 The author also recalls that, because his brother was held incommunicado for more than 20 years and was subjected to torture, he was not treated with humanity and with respect for the inherent dignity of the human person. He therefore maintains that his brother was victim of a violation by the State party of article 10, paragraph 1, of the Covenant.

3.8 The author further points out that, as a victim of enforced disappearance, his brother's right to be recognized as the subject of rights and obligations, in other words, as a human being deserving of respect, was denied. He adds that, as a victim of enforced disappearance, his brother was deprived of the protection of the law, and his right to recognition as a person before the law was denied, in violation by the State party of article 16 of the Covenant.

3.9 As to the exhaustion of domestic remedies, the author refers to his father's numerous attempts to ascertain the fate or whereabouts of Mohamed Hassan Aboussedra. Because it was impossible in Libya to find a lawyer that would have agreed to represent him in proceedings of this kind, he had not been able to file a legal complaint for disappearance. The author asked the Gaddafi International Charity and Development Foundation for assistance, but the only response he received was that "Dr Aboussedra is on the list of persons due to be released", with no further follow-up. There was also no satisfactory response to the inquiries that the author's counsel addressed to the Permanent Mission of the Libyan Arab Jamahiriya on 31 January 2007. According to the author, all possible means of attempting to find his brother therefore proved fruitless and totally ineffective. He adds that domestic remedies in the State party are neither available nor effective, and he should thus no longer be obliged to continue with actions and proceedings at domestic level in order for his communication to be admissible by the Committee.

#### **State party's failure to cooperate**

4. On 15 September 2008, 20 January 2009 and 24 July 2009, the State party was asked to submit information on the admissibility and merits of the communication.<sup>9</sup> The Committee notes that the information requested has not been received. It regrets the State party's failure to provide any information regarding the admissibility and/or substance of the author's claims. It recalls that, under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have adopted. In the absence of a reply from the

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<sup>9</sup> On 24 March 2008, the State party stated that it was challenging the admissibility of the communication, but did not set out the grounds for the challenge. On 8 April 2008, it stated that it would submit its observations on the admissibility and merits of the communication to the Committee before the deadline initially set, i.e. 22 July 2008. These observations were not received, despite three reminders.

State party, due weight must be given to the author's allegations, to the extent that these have been properly substantiated.<sup>10</sup>

#### **Additional submission by the author**

5. On 8 September 2010, the author, through his counsel, informed the Committee that his brother had been released by the State party's authorities on 7 June 2009, and that he had been ordered not to leave Tripoli. The Committee was also informed that the author's counsel had been expressly authorized to pursue the case concerning Mohamed Hassan Aboussedra before the Committee.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

6.1 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.

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.

6.3 With regard to the exhaustion of domestic remedies, the Committee reiterates its concern that, in spite of three reminders addressed to the State party, no observations on the admissibility or merits of the communication have been received from the State party. In the circumstances, the Committee finds that it is not precluded from considering the communication under article 5, paragraph 2 (b), of the Optional Protocol. The Committee finds no reason to consider the communication inadmissible and thus proceeds to its consideration on the merits, inasmuch as the claims under article 2, paragraph 3; article 6, paragraph 1, read in conjunction with article 2, paragraph 3; article 7; article 9, paragraphs 1 to 4; article 10, paragraph 1; and article 16 are concerned. It also notes that issues may arise under article 14, paragraphs 1 to 3 (a) to (d), as well as under article 7, read in conjunction with article 2, paragraph 3, with respect to the wife and children of the victim.

##### *Consideration of merits*

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

7.2 As to the alleged incommunicado detention of the author's brother, the Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its general comment No. 20 on article 7, which recommends that States parties should make provision against incommunicado detention. It notes that, like his four brothers, Mohamed Hassan Aboussedra was detained incommunicado in different places of detention, where he was subjected to torture from the time of his arrest on 19 January 1989 until his family were able to visit him in Abu Salim prison in April

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<sup>10</sup> See, inter alia, communication No. 1640/2007 *El Abani v. Libya*, Views adopted on 26 July 2010, para. 4; communication No. 1422/2005, *El Hassy v. Libya*, Views adopted on 24 October 2007, para. 4; communication No. 1295/2004, *El Alwani v. Libya*, Views adopted on 11 July 2007, para. 4; communication No. 1208/2003, *Kurbonov v. Tajikistan*, Views adopted on 16 March 2006, para. 4; and communication No. 760/1997, *Diergaardt et al. v. Namibia*, Views adopted on 25 July 2000, para. 10.2.



1992. Subsequently, although his four brothers had been released on 2 March 1995, he continued to be held incommunicado virtually without interruption until he was brought before the People's Court in Tripoli in 2004, that is, 15 years after his arrest. After being sentenced to life imprisonment by this special court, on 2 June 2005 the author's brother was retried before an ordinary court, which sentenced him to 10 years' imprisonment. Even though he had already been detained for 16 years and the court had ordered his immediate release, on 9 June 2005 Dr. Aboussedra was removed from Abu Salim prison and detained incommunicado at the internal security forces headquarters in Tripoli, where he suffered further torture. He was detained on these premises until obtaining authorization for his family to visit him in January and March 2009, before being finally released on 7 June 2009.

7.3 The Committee recalls its Views in the case of *Abdelhakim Wanis El Abani v. Libyan Arab Jamahiriya*<sup>11</sup> and notes that the State party has provided no response to the author's allegations. It also reaffirms that the burden of proof should not rest on the author of a communication, 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.<sup>12</sup> 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.

7.4 The Committee concludes, on the basis of the available evidence, that to have exposed the author's brother to acts of torture, to have kept him in captivity for more than 20 years, and to have prevented him from communicating with his family and the outside world constitutes a violation of article 7 of the Covenant in respect of Dr. Mohamed Hassan Aboussedra.<sup>13</sup>

7.5 With regard to the victim's wife, Selma Younès, and his two children, T.A. and A.A., the Committee notes the anguish and distress that they suffered as a result of the disappearance of Mohamed Hassan Aboussedra, about whom they were left without news between 1989 and 1992, and then for several years between 1995 and 2005. Moreover, although he had been tried in 2004 and 2005, and he had served his sentence in full, Dr. Aboussedra's fate remained unknown to his family, who were able to find out only in January 2007 that he was being held incommunicado at the internal security forces' headquarters. The family then had to wait a further two years before finally being permitted to visit him in January and March 2009. The Committee is therefore of the opinion that the facts before it reveal a violation of article 7 of the Covenant, read in conjunction with article 2, paragraph 3, with regard to the victim's wife and his two children.<sup>14</sup>

7.6 Regarding the complaint of a violation of article 9, the information before the Committee shows that the author's brother was arrested by agents of the State party without

<sup>11</sup> Communication No. 1640/2007, Views adopted on 26 July 2010, para. 7.3.

<sup>12</sup> See communication No. 1422/2005, *El Hassy v. Libya*, supra, note 16, para. 6.7; 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.

<sup>13</sup> See communication No. 1295/2004, *El Alwani v. Libya*, Views adopted on 11 July 2007, para. 6.5; communication No. 1422/2005, *El Hassy v. Libya*, supra, note 16, para. 6.2; communication No. 540/1993, *Celis Laureano v. Peru*, Views adopted on 25 March 1996, para. 8.5; and communication No. 458/1991, *Mukong v. Cameroon*, Views adopted on 21 July 1994, para. 9.4.

<sup>14</sup> See communication No. 1640/2007, *El Abani v. Libya*, supra, note 16, para. 7.5; communication No. 1422/2005, *El Hassy v. Libya*, supra, note 16, para. 6.11; communication No. 107/1981, *Quinteros v. Uruguay*, Views adopted on 21 July 1983, para. 14; and communication No. 950/2000, *Sarma v. Sri Lanka*, Views adopted on 31 July 2003, para. 9.5.

a warrant, then held incommunicado without access to a defence counsel and without being informed of the grounds for his arrest or the charges against him until he was brought before the People's Court in Tripoli, a court with special jurisdiction, for the first time in 2004, that is, 15 years after his arrest. The Committee recalls that, in accordance with article 9, paragraph 4, judicial review of the lawfulness of detention must provide for the possibility of ordering the release of the detainee if his or her detention is declared incompatible with the provisions of the Covenant, in particular those of article 9, paragraph 1. In the case in question, the author's brother was held in detention until he was brought before a judge in 2004, without being able to appoint legal counsel or being able to instigate any form of legal process through which the lawfulness of his detention could be challenged. Furthermore, after being retried in 2005 before an ordinary court, which ordered his release since he had served his sentence in full, the victim was again detained incommunicado until his release on 7 June 2009. In the absence of any appropriate explanation by the State party, the Committee finds a multiple violation of article 9.<sup>15</sup>

7.7 Regarding the author's complaint under article 10, paragraph 1, that his brother was held incommunicado for almost 20 years and subjected to torture, 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 the absence of State party information on the treatment of the author's brother in Abu Salim prison and at the internal security forces' headquarters in Tripoli, where he was detained, the Committee finds a violation of article 10, paragraph 1, of the Covenant.<sup>16</sup>

7.8 Although the author does not invoke article 14 of the Covenant, the Committee is of the opinion that the information before it regarding the first sentence handed down against Mohamed Hassan Aboussedra in 2004 raises issues under article 14, paragraph 1 and paragraph 3 (a) to (d), of the Covenant. The Committee observes that Dr. Aboussedra was not tried until 15 years after his arrest, and sentenced to life imprisonment in a closed trial on a date unknown to his family. He was never given access to his criminal file, or to the charges against him, and never had the opportunity to appoint a counsel of his choice to assist him. The Committee therefore concludes that the trial and sentencing of Mohamed Hassan Aboussedra to life imprisonment by the People's Court in Tripoli constitute a violation of article 14, paragraph 1 and paragraph 3 (a) to (d), of the Covenant.

7.9 In respect of article 16, the Committee reiterates its established jurisprudence, according to which intentionally removing a person from the protection of the law for a prolonged period of time may constitute a denial of his or her right to recognition as a person before the law if the victim was in the hands of the State authorities when last seen and if the efforts of his or her relatives to obtain access to effective remedies, including judicial remedies (Covenant, art. 2, para. 3), have been systematically impeded.<sup>17</sup> In the present case, the author alleges that his brother was arrested on 19 January 1989 without a warrant and without being informed of the legal grounds for his arrest. He was then taken to various undisclosed places and none of his family's subsequent attempts to obtain news about him produced results until January 2009. Although they had acknowledged his

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<sup>15</sup> See communication No. 1640/2007, *El Abani v. Libya*, supra, note 16, para. 7.6; and communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.5.

<sup>16</sup> See general comment No. 21 [44] on article 10, para. 3; communication No. 1134/2002, *Gorji-Dinka v. Cameroon*, Views adopted on 17 March 2005, para. 5.2; and communication No. 1422/2005, *El Hassy v. Libya*, supra, note 16, para. 6.4.

<sup>17</sup> See communication No. 1327/2004, *Grioua v. Algeria*, Views adopted on 10 July 2007, para. 7.8; and communication No. 1495/2006, *Zohra Madaoui v. Algeria*, Views adopted on 28 October 2008, para. 7.7.

detention in Abu Salim prison in authorizing his family to visit him in April 1992, the Libyan authorities failed to provide the family with any further information about him. The Committee therefore concludes that the enforced disappearance of Mohamed Hassan Aboussedra during the greater part of his detention denied him the protection of the law for the same period and deprived him of his right to recognition as a person before the law, in violation of article 16 of the Covenant.

7.10 The author also 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 reiterates the importance that it accords 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.<sup>18</sup> In the present case, the information before it indicates that the author's brother did not have access to an effective remedy, and the Committee therefore concludes that the facts before it reveal a violation of article 2, paragraph 3, of the Covenant, read in conjunction with article 6, paragraph 1, and article 7.<sup>19</sup>

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 information before it discloses violations by the State party of article 2, paragraph 3, read in conjunction with article 6, paragraph 1, and article 7; article 7 standing alone; article 9; article 10, paragraph 1; article 14, paragraph 1 and paragraph 3 (a) to (d); and article 16 of the Covenant with regard to the author's brother. The facts also reveal a violation of article 7, read in conjunction with article 2, paragraph 3, with regard to the victim's wife and two children.

9. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including a thorough and effective investigation into the disappearance of Dr. Aboussedra, adequate information about the results of its inquiries, and adequate compensation for the victim, his wife and his children for the violations suffered. The Committee considers the State party duty-bound to conduct thorough investigations into the alleged violations of human rights, particularly enforced disappearances and acts of torture, and also to prosecute, try and punish those held responsible for such violations.<sup>20</sup> The State party is also under an obligation to take steps to prevent similar violations in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory 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.

<sup>18</sup> Paras. 15 and 18.

<sup>19</sup> See communication No. 1422/2005, *El Hassy v. Libya*, supra, note 16, para. 6.9; and communication No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 9.9.

<sup>20</sup> See communication No. 1422/2005, *El Hassy v. Libya*, supra, note 16, para. 8; communication No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 11; and communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 10.9.

[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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