



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 1805/2008

#### Views adopted by the Committee at its 106th session (15 October–2 November 2012)

<i>Submitted by:</i>	Mussa Ali Mussa Benali (represented by Al-Karama for Human Rights and TRIAL)
<i>Alleged victims:</i>	Mussa Ali Mussa Benali and Abdeladim Ali Mussa Benali – the author and his brother
<i>State party:</i>	Libya
<i>Dates of communications:</i>	30 May 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 20 August 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	1 November 2012
<i>Subject matter:</i>	Unlawful arrest, incommunicado detention, torture and ill-treatment, arrest without a warrant, enforced disappearance
<i>Procedural issues:</i>	State party's failure to cooperate
<i>Substantive issues:</i>	Right to an effective remedy; right to life; prohibition of torture and cruel and inhuman treatment; right to liberty and security of the person; arbitrary arrest and detention; respect for the inherent dignity of persons deprived of their liberty; recognition as a person before the law
<i>Articles of the Covenant:</i>	2, paragraph 3; 6, paragraph 1; 7; 9, paragraphs 1 to 4; 10, paragraph 1; 16; and 21
<i>Articles of the Optional Protocol:</i>	5, paragraph 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 (106th session)**

concerning

#### **Communication No. 1805/2008\***

*Submitted by:* Mussa Ali Mussa Benali (represented by Al-Karama for Human Rights and TRIAL)

*Alleged victims:* Mussa Ali Mussa Benali and Abdeladim Ali Mussa Benali – the author and his brother

*State party:* Libya

*Dates of communication:* 30 May 2008 (initial submission)

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

*Meeting* on 1 November 2012,

*Having concluded* its consideration of communication No. 1805/2008, submitted to the Human Rights Committee by Mussa Ali Mussa Benali 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, dated 30 May 2008, is Mussa Ali Mussa Benali, a Libyan national. He submits the communication on behalf of his brother, Abdeladim Ali Mussa Benali, also a Libyan national, and on his own behalf. He claims that Libya violated article 2, paragraph 3; article 6, paragraph 1; article 7, article 9, paragraphs 1–4; article 10, paragraph 1; and article 16 of the Covenant. The Optional Protocol entered into force for Libya on 16 August 1989. He is jointly represented by the organizations Al-Karama for Human Rights and TRIAL (Track Impunity Always).

1.2 On 20 August 2008, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim

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\* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanela Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval. The text of an individual (dissenting) opinion by Mr. Krister Thelin is attached to these views.

measures, requested the State party to adopt all necessary measures to protect the life, safety and personal integrity of Abdeladim Ali Mussa Benali, so as to avoid irreparable damage to him, and inform the Committee on the measures taken within 30 days of the request<sup>1</sup>.

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

2.1 The author submits that his brother Abdeladim Ali Mussa Benali is a Libyan citizen, born in Darnah in 1969. He resided at the family residence situated in Essahel Acharqi (Darnah) and used to work at the state-owned Darnah furniture factory. The author himself was born in Darnah in 1964, and at the time of filing the communication he was a Libyan citizen residing in the United Kingdom.

2.2 The author submits that on 9 August 1995, Abdeladim Ali Mussa Benali was arrested by the agents of the Internal Security Agency (ISA). Prior to his arrest, ISA had subjected him to close surveillance. He had been routinely followed by ISA agents and had been under orders to report daily at the Darnah ISA headquarters. Since July 1995, he had reported in person to the internal security agents every morning and had been systematically held at the ISA until the evening.

2.3 The author submits that, after Abdeladim Ali Mussa Benali's arrest on 9 August 1995, he was kept for two hours at the Darnah ISA headquarters, and then transferred to Benghazi, to be finally brought by plane to Tripoli. The author and the family later learned that Abdeladim Ali Mussa Benali was held in secret detention for more than five years in the Abu Slim prison. He spent his first two years there in an underground cell which he was never allowed to leave.

2.4 In September 2000, Abdeladim Ali Mussa Benali's relatives, who had received no news about him during all this time, were informed that he was alive but detained at the Abu Slim prison and were authorized to visit him. During this first visit in September 2000, Mr. Benali told his family that he had been regularly tortured (viciously beaten with iron bars and similar objects and deprived of food) and that he suffered from the after-effects of these abuses. He also explained that he had never been formally charged with any crimes and had never been brought before a judge.

2.5 The author submits that on 15 October 2002,<sup>2</sup> Abdeladim Ali Mussa Benali was released without ever having been charged with a crime. He reunited with his family in Darnah and resumed his work in the furniture factory, after various governmental institutions – namely the ISA, the People's Social Command in Darnah and the Gaddafi International Charity and Development Foundation – expressly approved his return to his professional life in letters that provide corroborating evidence of his prior detention.

2.6 The author submits that by the end of 2004, Abdeladim Ali Mussa Benali was again subjected to harassment and intimidation by ISA. On 16 February 2005, Abdeladim Ali Mussa Benali went to the British embassy in order to request a visa to travel to the United Kingdom of Great Britain and Northern Ireland. That same day, he was arrested again by internal security agents who were waiting for him at the family home. He was brought to the ISA headquarters in Benghazi, where he was tortured for many days, until he was transferred to the Al Abiar detention centre, which was managed by the same agency. He was secretly detained there until the beginning of 2006, when he was transferred to the Abu Slim prison. Once in Abu Slim prison, he was frequently beaten and mistreated and, as

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<sup>1</sup> The Committee never received the requested information from the State party.

<sup>2</sup> Mr. Benali had been detained for seven years and two months during this first period of time.

during his previous detention, he was kept in isolation in an underground cell for a long period of time.

2.7 The author submits that in May 2006, his family was informed of Abdeladim Ali Mussa Benali's whereabouts and allowed to visit him once a month, until September 2006. During those visits, the members of his family were told that he had once again suffered grave abuses and that no legal proceedings had been undertaken against him. However, at the beginning of October 2006, after riots in the Abu Slim prison, all visits were forbidden.

2.8 On 3 October 2006, a protest broke out in the prison following the return of 190 prisoners who had been brought to court to be retried and had had their convictions confirmed. An altercation started with some of the prison guards. On 4 October 2006, the security services launched an intervention into the prison in which tear-gas grenades and live ammunition were used against detainees. As a result, at least one inmate was killed and about ten were injured. Abdeladim Ali Mussa Benali was able to report this incident to a representative of the organization Al-Karama for Human Rights, by means of a cell phone that he had hidden from the prison guards. Libyan authorities afterwards took severe reprisals against the detainees for the riot. There was a general search of the whole facility, a drastic cut in food rations and a general prohibition of family visits. Those inmates suspected of having communicated with the outside world regarding the situation in prison were tortured by security services. The detainees were also coerced into revealing who had fomented the protest. Despite the high risk to which he was exposed, the Abdeladim Ali Mussa Benali managed to give important information on flagrant violations of detainees' fundamental rights in Abu Slim on several occasions in the months following the protest.

2.9 The author submits that, according to reliable sources,<sup>3</sup> Abdeladim Ali Mussa Benali disappeared on 23 March 2007 from the Abu Slim prison. His relatives have not been able to gather any information concerning his fate or whereabouts. On 18 May 2007, his disappearance was brought to the attention of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Enforced or Involuntary Disappearances and the Special Representative of the Secretary-General on human rights defenders.

2.10 On 30 April 2009, the author informed the Committee that Mr. Benali had been visited in Abu Slim prison by one of his brothers on 26 April 2009.

2.11 The author submitted that fear of reprisals from the Government prevented him from complaining to judicial authorities or resorting to other remedies provided for in domestic law. The regime in Libya had notoriously engaged in merciless repression with the aim of putting down any kind of political opposition. The mere fact of inquiring about the situation of a relative may result in detention, torture or death at the hands of the security forces. The author said that, despite the extremely poor human rights record of the State party, complaints for such violations before national courts were virtually non-existent.

2.12 The author argued that, even if he could have had access to remedies before national courts, they would have been totally ineffective because of the deeply flawed Libyan justice system. The executive branch exercised complete control over judicial authorities. Not only was Colonel Gaddafi empowered to set up special, field or emergency tribunals, but he was also entitled to revoke judgments handed down by courts, and even to sit in the place of the Supreme Court. The author argued that the domestic remedies were ineffective, and therefore he did not need to exhaust them.

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<sup>3</sup> The author does not specify which sources he is referring to.

### The complaint

3.1 The author claims that the State party violated article 6, paragraph 1, of the Covenant. Any situation of unacknowledged and incommunicado detention, such as that suffered by Abdeladim Ali Mussa Benali, entails a major threat to the life of the persons concerned, given the fact that, by its very nature, such a context places the victim entirely at the mercy of those who hold him.<sup>4</sup> Even if these circumstances do not bring about the actual death of the victim, it appears clearly that the State party has not fulfilled its obligation to protect the victim's inherent right to life and is, to that extent, in breach of article 6 of the Covenant.<sup>5</sup>

3.2 The author claims that the State party violated article 7 of the Covenant. The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment has been violated in respect of the author and his brother, Abdeladim Ali Mussa Benali. The very fact of being subjected to an enforced disappearance amounts to cruel, inhuman or degrading treatment.<sup>6</sup> Indeed, stress and anguish provoked by indefinite detention with no contact with the family or with the outside world constitutes a treatment incompatible with article 7 of the Covenant, as stated by the Committee on many occasions.<sup>7</sup> In addition to the suffering inevitably caused by being held incommunicado, Abdeladim Ali Mussa Benali has repeatedly been subjected to acts of torture, prolonged confinement in an underground cell, and deprivation of food.

3.3 The author submits that, as a close family member of Abdeladim Ali Mussa Benali, he himself has suffered acute stress and anguish resulting from uncertainty and fully justified fear about his brother's fate. Such suffering of victims' family members has been repeatedly recognized by the Committee as amounting to a violation of article 7 of the Covenant.

3.4 The author claims that both arrests in this case were made in total disregard of established procedures. During the two periods of detention, Abdeladim Ali Mussa Benali was not informed of the reasons for his arrest. Also, in violation of Abdeladim Ali Mussa Benali's procedural rights, he was not brought before a judge or any other officer exercising judicial power. Moreover, no criminal prosecution has ever been initiated against him. Abdeladim Ali Mussa Benali has been deprived of the possibility of challenging the legality of the detentions. As explained above, he has had no access to legal counsel and very limited access to his family. Therefore, the author claims that the State party breached its obligations under article 9, paragraphs 1–4, of the Covenant.

3.5 The author argues that the violations of article 7 committed against Abdeladim Ali Mussa Benali also constitute breaches of article 10 of the Covenant, since he was deprived of liberty at the time the abuses were perpetrated.

3.6 The author claims that Mr. Benali has been subjected to an enforced disappearance since 23 March 2007,<sup>8</sup> as well as between his first arrest in 1995 and September 2000 and

<sup>4</sup> The author refers to the Committee's general comment No. 6 (1982) on the right to life, *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40)*, annex V, paragraph 3.

<sup>5</sup> The author refers to communication No. 84/1981, *Barbato and Barbato v. Uruguay*, Views adopted on 21 October 1982.

<sup>6</sup> The author refers to communication No. 449/1991, *Mojica v. Dominican Republic*, Views adopted on 15 July 1995, and communication No. 540/1993, *Celis Laureano v. Peru*, Views adopted on 25 March 1996.

<sup>7</sup> The author refers to communication No. 950/2000, *Sarma v. Sri Lanka*, Views adopted on 16 July 2003.

<sup>8</sup> Until Abdeladim Ali Mussa Benali was able to meet with his brother on 26 April 2009.

during the first year of his second detention starting 16 February 2005, when he was held by internal security agents who never admitted his detention. The author argues that, since such disappearances render the victim incapable of enforcing any legal rights or protection mechanisms, enforced disappearances amount to a negation of legal personality in that the victim does not exist in the legal sphere. The author further submits that the Committee has held that enforced disappearances violate article 16 of the Covenant.<sup>9</sup>

3.7 The author states that the State party violated article 2, paragraph 3, of the Covenant. Judicial actions before domestic courts and other possible legal avenues established according to national law to seek redress were unavailable to victims of crimes such as those perpetrated against Mr. Benali. In the circumstances prevailing in the country, persons seeking redress for such violations would in any case be deprived of any chance of being successful. The Committee has affirmed that all States parties to the Covenant are “under the duty to thoroughly investigate without undue delay alleged violations of human rights, with a view to holding accountable those proven to be responsible thereof”.<sup>10</sup> No serious efforts were made to shed light on circumstances surrounding grave crimes and to bring perpetrators to justice, thus the right to an effective remedy was breached. In addition, considering that it has been established that the positive obligation to ensure rights guaranteed under the Covenant encompasses the obligation of providing effective remedies whenever a violation has occurred, the failure to take necessary measures to protect those rights established by articles 6, 7, 9, 10, and 16 amounts in itself to an autonomous violation of the said rights read in conjunction with article 2, paragraph 3, of the Covenant.

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

4. On 1 May 2009, 18 August 2009 and 22 December 2009, the State party was requested to submit information concerning the admissibility and merits of the communication. The Committee notes that this information has not been received. The State party has further failed to provide information on whether any measures were taken to protect the life, safety and personal integrity of Abdeladim Ali Mussa Benali. It regrets the State party’s failure to provide any information with regard to 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 may have been taken by the State. In the absence of a reply from the State party, due weight must be given to those of the author’s allegations that have been properly substantiated.<sup>11</sup>

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

##### *Consideration of admissibility*

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol of the Covenant.

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<sup>9</sup> The author refers to communication No. 1328/2004, *Kimouche et al. v. Algeria*, Views adopted on 10 July 2007.

<sup>10</sup> The author refers to communication No. 612/1995, *Chaparro et al. v. Colombia*, Views adopted on 29 July 1997.

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

5.2 The Committee notes, as required by article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under any other international procedure of investigation or settlement. The Committee notes that the author brought his brother's situation to the attention of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Representative of the Secretary-General on human rights defenders. The Committee recalls, however, that extra-conventional procedures or mechanisms established by the former Commission on Human Rights, the Human Rights Council or the Economic and Social Council, and whose mandates are to examine and publicly report on human rights situations in specific countries or territories or on major phenomena of human rights violations worldwide, do not constitute a procedure of international investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.<sup>12</sup>

5.3 With respect to the question of exhaustion of domestic remedies, the Committee reiterates its concern that, in spite of three reminders addressed to the State party, no information or observations on the admissibility or merits of the communication have been received from the State party. Given these circumstances, the Committee finds that it is not precluded from considering the communication under article 5, paragraph 2 (b), of the Optional Protocol.

5.4 The Committee considers that the author's allegations have been sufficiently substantiated, and thus proceeds to its consideration on the merits in respect of the claims made with respect to: (a) Abdeladim Ali Mussa Benali, under article 2, paragraph 3; article 6, paragraph 1; article 7; article 9, paragraphs 1–4; article 10, paragraph 1; and article 16, of the Covenant; (b) the author himself, under article 7, read alone and in conjunction with article 2, paragraph 3, of the Covenant.

#### *Consideration of the merits*

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

6.2 The Committee notes the failure of the State party to provide any information regarding the author's allegations, and reaffirms that the burden of proof cannot rest on the author of the communication alone, especially since the author and the State party do not always have equal access to the evidence and it is frequently the case that the State party alone has the relevant information.<sup>13</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. In cases where the allegations are corroborated by credible evidence submitted by the author and where further clarification depends on information that is solely in the hands of the State party, the Committee may consider the author's allegations substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party. In the absence of any explanation from the State party in this respect, due weight must be given to the author's allegations.

6.3 The Committee notes the author's unrefuted allegation that Abdeladim Ali Mussa Benali was kept in incommunicado detention in undisclosed locations from the time of his

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<sup>12</sup> See *Celis Laureano v. Peru*, para. 7.1; communication No. 1776/2008, *Bashasha v. Libyan Arab Jamahiriya*, Views adopted on 20 October 2010, para. 6.2.

<sup>13</sup> See *El Hassy v. Libyan Arab Jamahiriya*, para. 6.7; and communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted 14 July 2006, para. 8.3.

first arrest in August 1995 until September 2000, and from the time of his second arrest in February 2005 until May 2006. During these periods, he was kept in isolation, prevented from any contact with family or legal counsel, and tortured. His family had no means of protecting him, and feared retaliation if they questioned the authority of his captors. From September 2000 until his release in October 2002 and from May 2006 until October 2006, the authorities informed his family of his whereabouts and allowed them occasional visits. From October 2006 until March 2007, he was once again held incommunicado, apparently in Abu Slim prison, from which he reportedly disappeared in March 2007; his family was finally informed regarding his whereabouts and allowed to visit him in April 2009. Thus, for major portions of his years of incarceration, his detention had the character of an enforced disappearance.

6.4 The Committee notes that, on several occasions, Abdeladim Ali Mussa Benali was held by the State party's authorities for prolonged periods of time, at a location unknown to his family and without the possibility of communicating with the outside world. The Committee recalls that, in cases of enforced disappearance, the deprivation of liberty, followed by a refusal or failure to acknowledge that fact, or by concealment of the fate or whereabouts of the disappeared person, places such persons outside the protection of the law, and puts their lives in substantial and ongoing danger 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 fulfilled its obligation to protect Abdeladim Ali Mussa Benali's life. Indeed, the Committee, through previous cases, is also aware that other persons held in circumstances such as those endured by the author have been found to have been killed or failed to reappear alive. The Committee concludes that the State party failed in its duty to protect Abdeladim Ali Mussa Benali's life, in violation of article 6, paragraph 1, of the Covenant.

6.5 Regarding the incommunicado detention of Abdeladim Ali Mussa Benali, 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 the prohibition of torture or cruel, inhuman or degrading treatment or punishment,<sup>14</sup> in which the Committee recommends that States parties should make provision against incommunicado detention. The Committee notes that the State party has provided no response to the author's allegations regarding the incommunicado detention of Abdeladim Ali Mussa Benali from August 1995 to September 2000; from February 2005 to May 2006; and from October 2006 to April 2009. On the basis of the information at its disposal, the Committee considers that these three periods of incommunicado detention constitute violations of article 7 of the Covenant.<sup>15</sup>

6.6 With regard to the author, the Committee notes the anguish and distress caused by the disappearance of his brother, Abdeladim Ali Mussa Benali. Recalling its jurisprudence, the Committee concludes that the facts before it reveal a violation of article 7 of the Covenant with regard to the author.<sup>16</sup>

6.7 Regarding article 9, the information before the Committee shows that Abdeladim Ali Mussa Benali was twice arrested without a warrant by agents of the State party, and that he

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<sup>14</sup>Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40), annex VI, sect. A.

<sup>15</sup> See *El Alwani v. Libyan Arab Jamahiriya*, para. 6.5; *El Hassy v. Libyan Arab Jamahiriya*, para. 6.2; *Celis Laureano v. Peru*, para. 8.5; and communication No. 458/1991, *Mukong v. Cameroon*, Views adopted on 21 July 1994, para. 9.4.

<sup>16</sup> See *El Hassy v. Libyan Arab Jamahiriya*, para. 6.11; communication No. 107/1981, *Quinteros Almeida v. Uruguay*, Views adopted on 21 July 1983, para. 14; and *Sarma v. Sri Lanka*, para. 9.5.



was held in incommunicado detention on each occasion, without access to defence counsel, without being informed of the grounds for his arrest and without being brought before a judicial authority. During these periods, Abdeladim Ali Mussa Benali was unable to challenge the legality of his detention or its arbitrary character. In the absence of any explanation from the State party, the Committee finds violations of article 9 of the Covenant with regard to the arbitrary arrests and detentions of Abdeladim Ali Mussa Benali.<sup>17</sup>

6.8 The Committee has taken note of the author's allegation that Abdeladim Ali Mussa Benali was subjected to acts of torture during his detention, and held in inhuman conditions. 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 must be treated with humanity and respect for their dignity. In the absence of information from the State party concerning the treatment of Abdeladim Ali Mussa Benali in detention, the Committee concludes that the rights of Abdeladim Ali Mussa Benali under articles 7 and 10, paragraph 1, were violated.<sup>18</sup>

6.9 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 refusal of recognition as a person before the law if the victim was in the hands of the State authorities when last seen and, at the same time, if the efforts of his or her relatives to obtain access to potentially effective remedies, including judicial remedies (art. 2, para. 3, of the Covenant) have been systematically impeded.<sup>19</sup> In the present case, the author alleges that the State party authorities failed to provide Abdeladim Ali Mussa Benali's family with relevant information concerning his fate or whereabouts for periods encompassing several years, and that the State party maintained at the relevant time a climate in which family members were intimidated from initiating legal proceedings or even inquiring about detention by the security forces. The State party has provided no evidence refuting these allegations. The Committee finds that the enforced disappearance and incommunicado detention of Abdeladim Ali Mussa Benali deprived him of the protection of the law during the relevant periods, in violation of article 16 of the Covenant.

6.10 The author invokes article 2, paragraph 3, of the Covenant, which requires State parties to ensure that individuals have accessible, effective and enforceable remedies for asserting the rights recognized in the Covenant. The Committee reiterates the importance it attaches to State 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 (2004) on the nature of the general legal obligation imposed on State parties to the Covenant,<sup>20</sup> in which it states that failure by a State party to investigate

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<sup>17</sup> See *Medjnoune v. Algeria*, para. 8.5; communication No. 1811/2008, *Chihoub v. Algeria*, Views adopted on 31 October 2011, para. 8.7.

<sup>18</sup> See the Committee's general comment No. 21 (1992) on humane treatment of persons deprived of their liberty, *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40)*, annex VI, sect. B, para. 3; communication No. 1134/2002, *Gorji-Dinka v. Cameroon*, Views adopted on 17 March 2005, para. 5.2; communication No. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, Views adopted on 26 July 2010, para. 7.7; and *El Hassy v. Libyan Arab Jamahiriya*, para. 6.4.

<sup>19</sup> See *El Abani v. Libyan Arab Jamahiriya*, para 7.9; communication No. 1327/2004, *Grioua v. Algeria*, Views adopted on 10 July 2007, para. 7.8; and communication No. 1495/2006, *Madoui v. Algeria*, Views adopted on 28 October 2008, para. 7.7; communication No. 1782/2008, *Aboufaied v. Libya*, Views adopted on 21 March 2012, para. 7.10.

<sup>20</sup> *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40)

allegations of violations could in and of itself give rise to a separate breach of the Covenant. In the present case, the information before the Committee indicates that Abdeladim Ali Mussa Benali did not have access to an effective remedy, leading the Committee to find a violation of article 2, paragraph 3, read in conjunction with article 6, paragraph 1; article 7; article 9; article 10, paragraph 1; and article 16 of the Covenant vis-à-vis Abdeladim Ali Mussa Benali.<sup>21</sup> The Committee also finds there has been a violation of article 2, paragraph 3, read in conjunction with article 7 of the Covenant, with regard to the author.<sup>22</sup>

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, finds that the facts before it reveal violations by the State party of article 6, paragraph 1; articles 7 and 9; article 10, paragraph 1, and article 16 with regard to Abdeladim Ali Mussa Benali. The Committee further finds that the State party acted in violation of article 2, paragraph 3, read in conjunction with article 6, paragraph 1; articles 7 and 9; article 10, paragraph 1; and article 16 vis-à-vis Abdeladim Ali Mussa Benali. Lastly, the Committee finds violations of article 7 and article 2, paragraph 3, read in conjunction with article 7 of the Covenant with regard to the author.

8. 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) freeing Abdeladim Ali Mussa Benali immediately, if he is still being detained; (b) if he died in custody, returning his remains to his family; (c) conducting a thorough and effective investigation into his disappearance and any ill-treatment that he suffered in detention; (d) providing the author and Abdeladim Ali Mussa Benali with detailed information on the results of its investigations; (e) prosecuting, trying, and punishing those responsible for the enforced disappearance or other ill-treatment; and (f) providing appropriate compensation to the author and Abdeladim Ali Mussa Benali for the violations that they suffered. The State party is also under an obligation to take measures to prevent similar violations in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not 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 in the event that a violation is 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 language of the State party.

[Adopted in English, French and Spanish, the English 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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(Vol. I), annex III.

<sup>21</sup> See *El Hassy v. the Libyan Arab Jamahiriya*, para. 6.9; and communication No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 9.9.

<sup>22</sup> See *Chihoub v. Algeria*, para 8.11.

## Appendix

### **Individual (dissenting) opinion of Mr. Krister Thelin**

The majority has found a direct violation of article 6 of the Covenant. I disagree. For reasons stated in the dissenting opinion by Mr. Michael O'Flaherty and myself in another recent case (communication No. 1753/2008, *Guezout v. Algeria*), the Committee should have followed its established jurisprudence and found a violation of article 2, paragraph 3, read in conjunction with article 6, paragraph 1, of the Covenant.

[Done in English, French and Spanish, the English 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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