



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninetieth session
9 - 27 July 2007

VIEWS

Communication No. 1295/2004

<u>Submitted by:</u>	Mr. Farag Mohammed El Alwani (represented by counsel, Mr. Boris Wijkström)
<u>Alleged victim:</u>	The author and his brother (Mr. Ibrahim Mohammed El Alwani)
<u>State Party:</u>	The Libyan Arab Jamahiriya
<u>Date of communication:</u>	26 May 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 14 June 2004 (not issued in document form)
<u>Date of adoption of Views:</u>	11 July 2007

* Made public by decision of the Human Rights Committee.

Subject matter: Disappearance, detention incommunicado, death in prison

Procedural issues: None

Substantive issues: Right to life, prohibition of torture and cruel, inhuman or degrading treatment or punishment; right to liberty and security of person; arbitrary arrest and detention; respect for the inherent dignity of the human person; right to recognition before the law

Articles of the Covenant: 6, 7, 9, paragraphs 1 to 5, 16, 2(3)

Articles of the Optional Protocol: 5, 2 (b)

On 11 July 2007, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1295/2004.

[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

Ninetieth session

concerning

Communication No. 1295/2004**

<u>Submitted by:</u>	Mr. Farag Mohammed El Alwani (represented by counsel, Mr. Boris Wijkström)
<u>Alleged victim:</u>	The author and his brother (Mr. Ibrahim Mohammed El Alwani)
<u>State Party:</u>	The Libyan Arab Jamahiriya
<u>Date of communication:</u>	26 May 2004 (initial submission)

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

Meeting on 11 July 2006,

Having concluded its consideration of communication No. 1295/2004, submitted to the
Human Rights Committee by Mr. Farag Mohammed El Alwani 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:

** The following members of the Committee participated in the examination of the present
communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine
Chanet, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil,
Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael
O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez -Cerro, Mr. Rafael Rivas Posada,
Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

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

1. The author of the communication is Mr. Farag Mohammed El Alwani, a Libyan citizen, currently residing in Switzerland, who is acting on his own behalf and on behalf of his deceased brother, Mr. Ibrahim Mohammed El Alwani, a Libyan citizen. The author claims that his brother is a victim of violations by the Libyan Arab Jamahiriya of his rights under article 6; article 7; article 9, paragraphs 1, 2, 3 and 4; and article 10, paragraph 1, read in conjunction with article 2, paragraph 3, of the International Covenant on Civil and Political Rights and that he himself is a victim of violations by the Libyan Arab Jamahiriya of his rights under article 7 of the Covenant. He is represented by counsel. The Covenant and the Optional Protocol entered into force for the State party on 23 March 1976 and 16 August 1989, respectively.

The facts as submitted by the author

2.1 The author witnessed his brother's arrest on 27 July 1995, at approximately 3 a.m., by between five and seven plain-cloth members of the Al Bida branch of the internal security forces. They did not present an arrest warrant nor state the reasons for his arrest. When the author protested against his brother's arrest, he was also arrested and detained for three days.

2.2 The author's brother was taken to the Benghazi Internal Security Compound, from where he was reportedly transferred to Tripoli, presumably to the Ain-Zara prison and later to Abu Salim prison, as was standard procedure in cases concerning political opponents. The author's family did not receive any information on his brother's whereabouts, the charges against him, or any legal proceedings initiated against him. On several occasions, they were denied access by the prison authorities, who neither confirmed nor denied the arrest of the author's brother and merely told his family to go away.

2.3 In June 1996, the author's family heard rumours of a mutiny at Abu Salim prison, where according to a former detainee, the author's brother was detained on charges of membership in a banned Islamic group. Reportedly, the mutiny was violently repressed, resulting in the killing of hundreds of prisoners.

2.4 In July 2002, the police informed the author's family that his brother had died, without giving reasons. In 2003, the author's family received a death certificate confirming that the author's brother had died in a Tripoli prison, without indicating the cause of his death. The body of the deceased was never returned to his family, nor was the location of his burial site disclosed to them.

The Complaint

3.1 On admissibility, the author submits that the same matter is not being examined by another procedure of international investigation or settlement. As regards exhaustion of domestic remedies, he argues that there are no effective remedies in Libya for cases of alleged human rights violations concerning political opponents. He refers to the Committee's Concluding

Observations on the Libyan Arab Jamahiriya of 6 November 1998¹ and to an Amnesty International report², which expressed concern about the lack of independence of the judiciary in the State party. Lastly, the author submits that his family feared reprisals by the police and did not dare to avail itself of official remedies, while the unofficial remedies used were unsuccessful.

3.2 The author claims that the authorities' failure to take appropriate measures to protect his brother's life while he was in custody, and to investigate his death, amounts to a violation of article 6³.

3.3 He claims that the presumed length of his brother's *incommunicado* detention, lasting from his arrest on 25 July 1995 until the riot at Abu Salim prison in June 1996, was in violation of article 7 and article 10, paragraph 1⁴.

3.4 The author argues that his brother's arrest without a warrant, the failure by the police to inform him of the charges against him and to bring him promptly before a judge, as well as the absence of any means to challenge the legality of his detention, violated article 9, paragraphs 1, 2, 3 and 4

3.5 By reference to the Committee's jurisprudence⁵, the author submits that the authorities' refusal to inform him of his brother's whereabouts, their failure to notify him of his death for several years, to disclose the cause of his death and to return his body for burial amounts to a violation of article 7, read in conjunction with article 2, paragraph 3, in his own respect.

3.6 The author argues that the lack of an effective remedy to challenge the legality of his brother's detention, the State party's failure to compensate his family and to return his brother's body and to inform his family of the location where he is buried also violated article 2, paragraph 3.

State party's failure to cooperate

4. By Notes Verbales of 26 May 2004, 16 February and 18 November 2005 and 28 July 2006, the State party was requested to submit information on the admissibility and merits of the communication. The Committee notes that this information has not been received. The

¹ The author quotes from the observations of the Human Rights Committee on the Libyan Arab Jamahiriya, 6 November 1998, UN Doc. CCPR/C/79/Add.101, at paragraph 14.

² Reference is made to Amnesty International, Libya: Time to make human rights a reality, 27 April 2004, AI Index: MDE 19/002/2004, at pp. 13-17 and 27-29.

³ The author refers to Communication No. 84/1981, *Dermit Barbato v. Uruguay*, Views adopted on 21 October 1982, paragraph 10 (a); Communications No. 950/2000, *Sarma v. Sri Lanka*, Views adopted on 16 July 2003, paragraph 11; Communications No. 449/1991, *Mojica v. Dominican Republic*, Views adopted on 15 July 1994, paragraph 7; Communications No. 161/1991, *Rubio Herrera v. Colombia*, Views adopted on 2 November 1987, paragraph 11.

⁴ Reference is made to Communication No. 440/1990, *El-Megreisi v. Libyan Arab Jamahiriya*, Views adopted on 23 March 1994, paragraph 5.4.

⁵ The author refers to Communications Nos. 886/1999, *Schedko v. Belarus*, Views adopted on 3 May 2003, paragraph 10.2 and 887/1999, *Staselovich v. Belarus*, Views adopted on 3 April 2003, paragraph 9.2.

Committee regrets the State party's failure to provide any information with regard to the admissibility 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 taken. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that these have been properly substantiated.⁶

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 rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

5.2 As to 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. 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 other reason to consider this communication inadmissible and thus proceeds to its consideration on the merits.

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 by the parties, in accordance with article 5, paragraph 1, of the Optional Protocol.

6.2 The Committee recalls the definition of enforced disappearance in article 7, paragraph 2(i), of the Rome Statute of the International Criminal Court: "Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time." Any act leading to such disappearance constitutes a violation of many of the rights enshrined in the Covenant, including the right to liberty and security of the person (article 9), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 7), and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (article 10). It also violates or constitutes a grave threat to the right to life (article 6).⁷ In the present case, the author invokes articles 7, 9, and 10, paragraph 1.

⁶ See Committee's jurisprudence: Communication No. 1208/2003, *Kurbonov v. Tajikistan*, Views adopted on 16 March 2006, and Communication No. 760/1997, *J.G.A. Diergaardt et al. v. Namibia*, Views adopted on 25 July 2000, paragraph 10.2

⁷ Cf communication No. 950/2000, *Sarma v. Sri Lanka*, Views adopted on 31 July 2003, para. 9.3.

6.3 The Committee notes that the State party has provided no response to the author's allegations. It reaffirms that the burden of proof cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to the evidence and frequently the State party alone has the relevant information. 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 exclusively in the hands of the State party, the Committee may consider the author's allegations adequately substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party. In the present case, counsel has informed the Committee that a former detainee of the prison at which the author's brother was reported to have been detained corroborated the latter's detention and stated that the author's brother was detained for charges of membership in a banned Islamic group.

6.4 With respect to the claim under article 9, in light of the State party's failure to provide any information on the admissibility and merits of this communication, due weight must be given to the information provided by the author. The Committee bases its assessment on the following undisputed facts: that the author's brother was arbitrarily arrested and detained on 27 July 1995; that he was not informed of the charges against him; was not brought promptly before a judge; and was denied an opportunity to challenge the legality of his detention. The Committee recalls that incommunicado detention as such may violate article 9 and notes the author's claim that his brother was held in incommunicado detention from July 1995 until June 1996. For these reasons, and in the absence of adequate explanations on this point from the State party, the Committee is of the opinion that the author's brother was subjected to arbitrary arrest and detention, contrary to article 9 of the Covenant.

6.5 As to the alleged violation of article 7 of the Covenant, 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 detention incommunicado. In the circumstances, the Committee concludes that the disappearance of the author's brother, preventing him from any contact with his family or the outside world, constitutes a violation of article 7 of the Covenant.⁸ Further, the circumstances surrounding the disappearance of the author's brother and the testimony that the brother was tortured strongly suggest that the brother was so treated. The Committee has received nothing from the State party to dispel or counter such an inference. The Committee concludes that the treatment of the authors' brother amounts to a violation of article 7.⁹

⁸ Communications Nos. 540/1993, *Celis Laureano v. Peru*, Views adopted on 25 March 1996, para. 8.5; 458/1991, *Mukong v. Cameroon*, Views adopted on 24 July 1994, para. 9.4.

⁹ Communications Nos. 449/1991, *Mójica v. Dominican Republic*, Views adopted on 10 August 1994, para. 5.7; 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 9.6.

6.6 The Committee also notes the anguish and distress caused to the author by his brother's disappearance and subsequent death. Consequently, it finds that the facts before it reveal a violation of article 7 of the Covenant with regard to the author himself.¹⁰

6.7 With respect to the alleged violation of article 6, paragraph 1, the Committee recalls its General Comment 6 on article 6, which states, *inter alia*, that "The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

6.8 The Committee observes that sometime in 2003, the author was provided with his brother's death certificate, without any explanation of the exact date, cause or whereabouts of his death or any information on investigations undertaken by the State party. In addition, the State party has not denied that the disappearance and subsequent death of the author's brother was caused by individuals belonging to the Government's security forces. In the circumstances, the Committee finds that the right to life enshrined in article 6 has been violated by the State party.

6.9 The authors have invoked article 2, paragraph 3, of the Covenant, which requires States parties to ensure that individuals have accessible, effective and enforceable remedies to uphold the rights enshrined in the Covenant. The Committee attaches importance to States parties' establishment of appropriate judicial and administrative mechanisms for addressing alleged violations of rights under domestic law. It refers to its general comment No. 31¹¹, 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. In the present case, the information before it indicates that neither the author nor his brother had access to such effective remedies, and the Committee concludes that the facts before it disclose a violation of article 2, paragraph 3, of the Covenant, read in conjunction with article 6, article 7, and article 9 with respect to the author's brother; and a violation of article 2, paragraph 3, read in conjunction with article 7 of the Covenant with respect to the author himself.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it reveal violations by the State party of article 6; article 7; and article 9 of the Covenant, and article 2, paragraph 3, read in conjunction with article 6, article 7, and article 9 in respect of the author's brother, and of article 7 and article 2, paragraph 3, of the Covenant read in conjunction with article 7 in respect of the author himself.

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 thorough and effective

¹⁰ Communications Nos. 107/1981, *Elena Quinteros Almeida v. Uruguay*, Views adopted on 21 July 1983, para. 14; 950/2000, *Sarma v. Sri Lanka*, Views adopted on 31 July 2003, para. 9.5.

¹¹ Para. 15.

investigation into the disappearance and death of the author's brother, the appropriate information emerging from its investigation, and adequate compensation to the author for the violations suffered by him. The State party is also under a duty to prosecute, try and punish those held responsible for such violations. The State party is, further, required 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, that State party has undertaken to ensure all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy where a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[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.]
