

## **Libya must investigate disappearance of individual held in incommunicado detention**

02.08.2013

### ***Abushaala v. Libya (1913/2009)***

#### **Summary**

In March 2013, the Human Rights Committee was asked to consider whether Libya had violated its obligations under the International Covenant on Civil and Political Rights in holding an individual under incommunicado detention, failing to acknowledge their detention and thereby concealing their fate.

The communication was submitted by a Libyan citizen on behalf of himself, his family and his missing brother under the Optional Protocol to the Covenant.

#### **Background**

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#### **Background**

On 17 September 1995, the author's brother, Abdelmotaleb Abushaala, was arrested under considerable duress by plain clothes officers of the Libyan internal security forces.

Following local rumours, the author's mother visited Abu Salim Prison but was unable to obtain confirmation that her son was being held there. In 2001, the author's parents submitted a written request to the prison management, at the latter's invitation, for information as to whether their son was being held there. The author's mother also visited Ain-Zara Prison several times on the basis of similar rumours. In 2002, the author's mother submitted a written request to the Ain-Zara prison management, again on the latter's invitation. The family did not receive a reply to either request.

Between 2002 and 2006, the author's parents tried to bring legal proceedings in relation to their son's disappearance, but all of the lawyers that they consulted advised them that there was no judicial procedure for dealing with such matters.

In 2008, the author's family asked the Saif Gaddafi human rights foundation to intervene, but to no avail. The author's relatives were in also unsuccessful in persuading local civic organisations in Tripoli to intervene.

On 11 August 2009, the author filed this communication with the Committee under the Optional Protocol to the Covenant. The author claimed that Libya had violated its obligation to provide the author's brother with an effective remedy under article 2(3) of the Covenant, with respect to the violation of his rights to life, freedom from torture and cruel or degrading treatment, liberty and security of the person, treatment with respect for the inherent dignity of the human person, and recognition as a person before the law (under articles 6(1), 7, 9, 10(1) and 16 of the Covenant respectively).

In addition to claiming in respect of his brother's rights, the author also claimed the same violation of article

2(3) in relation to both his and his parent's right to freedom from torture and cruel or degrading treatment under article 7 of the Covenant.

### **The Committee's decision**

As a preliminary point, the Committee noted that it had not received any observations regarding either the admissibility or merits of the communication from Libya (despite numerous reminders from the Committee). Though it was not necessarily clear that the author had exhausted all available domestic remedies, the Committee found that, in the circumstances, it was not precluded from considering the communication under article 5(2)(b) of the Optional Protocol. The Committee therefore found the author's claims under the Covenant to be admissible.

On the merits, the Committee considered that due weight should be given to the author's allegations to the extent that they had been sufficiently substantiated, in the circumstances that Libya had not replied to the author's allegations.

The Committee recalled that, in cases of enforced disappearance, the act of deprivation of liberty, followed by a refusal to acknowledge the deprivation of liberty or concealment of the fate of the disappeared person, denies the person the protection of the law and places the person's life at a serious and constant risk, for which the State is accountable. The Committee recognised the suffering caused by the author's brother's incommunicado detention and recalled its General Comment No. 20, in which it recommended that State parties make provision against incommunicado detention. The Committee observed that persons deprived of their liberty must not be subjected to any hardship other than that resulting from the deprivation of liberty and that they must be treated with respect for their dignity. The Committee also recalled its jurisprudence, according to which the intentional removal of a person from the protection of the law for a prolonged period of time may constitute a refusal to recognise that person as a person before the law. The Committee concluded that the enforced disappearance of the author's brother had denied him his right to recognition as a person before the law.

The Committee referred to its General Comment No. 31 and noted the general legal obligation imposed on State parties to investigate allegations of violations. The Committee found that Libya had failed to conduct a thorough and effective investigation into the disappearance of the author's brother as required by article 2(3) of the Covenant.

On this basis, and in the absence of any satisfactory explanations from Libya, the Committee found Libya to have breached article 2(3) of the Covenant, read in conjunction with articles 6(1), 7, 9, 10(1) and 16, with regard to the author's brother. The Committee also considered that Libya had violated article 2(3) with regard to the rights of the author and his parents under article 7 of the Covenant.

The Committee therefore concluded that Libya was under an obligation, in accordance with article 2(3) of the Covenant, to provide the authors with an effective remedy. Specifically, the Committee recommended that Libya take steps to:

- (a) conduct a thorough and effective investigation into the disappearance of the author's brother;
- (a) provide the author and his family with detailed information on the results of its investigation;
- (b) release the author's brother immediately, if he is still being detained incommunicado;
- (c) hand over the author's brother's remains to his parents in the event that he is deceased;
- (d) prosecute, try and punish those responsible for the violations committed; and
- (e) provide adequate compensation to the author and his parents for the violations suffered, as well as to the author's brother, if he is still alive.

The Committee also observed that Libya was under an obligation to prevent similar violations in the future.

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

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