



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 1958/2010

#### Views adopted by the Committee at its 111th session (7–25 July 2014)

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| <i>Submitted by:</i>                     | A.M.H. El Hojouj Jum'a et al. (represented by counsel, Anne Scheltema Beduin and Liesbeth Zegveld)   |
| <i>Alleged victims:</i>                  | The authors  |
| <i>State party:</i>                      | Libya  |
| <i>Date of communication:</i>            | 31 March 2010 (initial submission)   |
| <i>Document references:</i>              | Special Rapporteur's rule 97 decision, transmitted to the State party on 21 July 2010 (not issued in document form)  |
| <i>Date of adoption of views:</i>        | 21 July 2014   |
| <i>Subject matter:</i>                   | Attacks on, and harassment of, the authors, as members of the family of Ashraf El-Hojouj, a Palestinian medical doctor arrested and convicted in Libya.  |
| <i>Substantive issues:</i>               | Lack of an effective remedy, ill-treatment, right to personal security, liberty of movement, arbitrary interference with privacy and family life, protection of family, prohibition of discrimination. |
| <i>Procedural issues:</i>                | None   |
| <i>Articles of the Covenant:</i>         | 2; 7; 9; 12; 17; 23; and 26  |
| <i>Article of the Optional Protocol:</i> | None   |



## 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 (111th session)**

concerning

#### **Communication No. 1958/2010\***

*Submitted by:* A.M.H. El Hojoui Jum'a et al. (represented by counsel, Anne Scheltema Beduin and Liesbeth Zegveld)

*Alleged victims:* The authors

*State party:* Libya

*Date of communication:* 31 March 2010 (initial submission)

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

*Meeting* on 21 July 2014,

*Having concluded* its consideration of communication No. 1958/2010, submitted to the Human Rights Committee on behalf of Mr. A.M.H. El Hojoui Jum'a et al. 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 authors of the communication, and the State party,

*Adopts* the following:

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

1. The authors of the communication are Ahmed Jum'a El Hojoui (hereinafter "the first author"), his wife, Afaf El Hojoui ("the second author"), and their four children, all born in Libya, Abeer (born in 1974, "the third author"), Darin (born in 1978, "the fourth author"), Amel (born in 1980, "the fifth author"), and Eman (born in 1984, "the sixth author"). They claim that Libya violated articles 2, paragraph 1, and 3, 7, 9, 12, 17, 23 and 26 of the Covenant in their regard. They are represented by counsel. The Optional Protocol entered into force for the State party on 16 May 1989.

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

2.1. The El-Hojoui family is a stateless family of Palestinian origin, who lived in Egypt between 1962 and 1972, and thereafter settled in Libya in 1972, after Ahmed Jum'a El

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\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Ahmad Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Víctor Manuel Rodríguez Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Föhr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.

Hojouj, the first author, was offered a contract to work as a mathematics teacher in Tarhuna. The family lived in Libya until 2005, when they obtained refugee status in the Netherlands, where they currently live. The first and second authors are the parents of Ashraf El-Hojouj, a Palestinian doctor, who was arrested on 29 January 1999 on charges of premeditated murder and causing an epidemic by injecting 393 children in Al-Fatah paediatric hospital with HIV/AIDS, along with five co-accused Bulgarian nurses.<sup>1</sup>

2.2 The authors submit that, following the arrest of Ashraf El Hojouj, they were placed under permanent surveillance. They were regularly followed, intimidated, threatened, denied medical care, and harassed by the Libyan secret service, inter alia, which accused them – although not formally – of collaborating with the secret services of the United States of America and Israel. The authors also highlight the fact that, starting in 1994, on account of economic difficulties, the Libyan authorities initiated pressure against the Palestinian community in Libya, threatening its members with forced deportation, and stirring up hostility among the Libyan people against the Palestinian community. The authors claim that they subsequently suffered from discrimination and hostility and faced problems renewing their residence permits as of 1995, even though the first author had held a residence permit since 1972, when he was hired as a teacher. Concerned that their passports would be seized, the authors decided to entrust them to the Palestinian Embassy. Whenever they were asked for their passports, the authors would show copies. They claim that their passports would otherwise have been confiscated, and that they would have been unable to leave the country, as had happened to other foreigners in Libya.<sup>2</sup>

2.3 The authors stress that the Libyan “Charter of Honour”, a law adopted by the General People’s Committee in 1997, established the notion of collective responsibility.<sup>3</sup> Accordingly, once a person was arrested, the members of his or her family would be deprived of public services and evicted from their home(s), which would then be demolished. Under the same law, the members of the family of a person who had been arrested could be denied access to public services, such as electricity, water and the telephone, as well as access to food supplies, social benefits or basic administrative services. According to that law, “those who carry out or encourage or give shelter to or defend any individual or group, activity or behaviour which can be described as treachery or heresy or corruption in any form (...)” are criminals. Ashraf El-Hojouj was in the first instance accused of acts against the security of the State, which is a form of treachery. Punishment for treachery also extends to the family of the individual alleged to have committed the act. The authors add that the electricity supply to their home was cut off in May 2004,<sup>4</sup> and that the Libyan authorities took deliberate measures aimed at maintaining them in a permanent state of terror, appointing a special criminal investigation unit for that purpose.<sup>5</sup>

<sup>1</sup> See communication No. 1755/2008, *Ashraf Ahmad El Hagog Juma v. Libya*, views adopted on 19 March 2012.

<sup>2</sup> The authors refer to the case of *El Dernawi v. Libya* (communication No. 1143/2002, views adopted on 20 July 2007), para. 2.2.

<sup>3</sup> The authors annex a report by Amnesty International, “Libya: time to make human rights a reality” (April 2004), which describes the “Charter of Honour”. The Committee, in its concluding observations of 6 November 1998, held that the Law violated several articles of the Covenant, including articles 7, 9 and 16 (CCPR/C/79/Add.101, para. 12).

<sup>4</sup> The first author encloses a signed affidavit in which he describes the incident. He also annexes a copy of his handwritten complaint (in Arabic) to the electricity company, as well as proof of payment of his electricity bills.

<sup>5</sup> The authors name the chief of the unit, a government agent whom they consider to be responsible for most of the acts described.

2.4 After the arrest and subsequent disappearance of Ashraf El-Hojouj in January 1999, the authors actively sought information about his whereabouts. They made inquiries with the police, reported him missing, and sent several communications to the Libyan authorities. They refer to a letter from the Prosecutor's Office dated 29 June 1999, strictly prohibiting any contact with the suspects in the case of the five Bulgarian nurses and Ashraf El-Hojouj.<sup>6</sup> For 10 months, the authors were denied contact with their relative, and given no news of his whereabouts. The family was informed that Ashraf El Hojouj had been hanged.

2.5 On 30 November 1999, the extraordinary Prosecutor for crimes against the State summoned the first author to Tripoli, without giving a reason. Upon his arrival, the first author was informed that his son, Ashraf, was still alive and being detained in the Jadida prison in Tripoli. The family was allowed to visit him, closely monitored by five armed guards. Nonetheless, during one such visit, Ashraf El Hojouj managed to hand a notebook to the first author, in which he described his treatment in detention. On their journey home, the authors were followed, arrested and searched by the police. The police found the notebook on the first author, whereupon they accused him of trying to help his son to escape, and threatened him with imprisonment. The family's visiting rights were subsequently limited to one visit a month, with permission, and in the presence of at least five armed guards.

2.6 At the time of the incommunicado detention of Ashraf El-Hojouj, and while he was searching for his son's whereabouts, the first author was reportedly involved in two serious car accidents on 6 February and 16 April 1999 respectively, which he believes were deliberately caused by the Libyan authorities. In both accidents, the first author suffered several injuries, which required him to be hospitalized, and prevented him from walking for several weeks. The second car accident took place on 16 April 1999, when the first author was on his way to visit his daughter, Abeer El Hojouj (the third author), who was living in a student residence in Al-Qarnaj, Tripoli. Also on 16 April 1999, late in the evening, Lieutenant Colonel J.A.M.<sup>7</sup> appeared at the gate of the student residence in a military vehicle, accompanied by several subordinates, and summoned the manager of the residence to bring Abeer El Hojouj (the third author) to him, claiming that he was a relative. The manager of the residence did not obey. The authors note that they were later informed by Ashraf El Hojouj that Lieutenant-Colonel J.A.M. had threatened him that he would abduct Abeer El Hojouj and rape her in front of him if he would not sign false confessions related to the charges against him.

2.7 After his second hospitalization, the driver of a red car with a passenger tried to run over the first author while he was on his way to work, an incident which he believes was also instigated by the authorities.

2.8 In 2001, the first author's contract as a mathematics teacher was suddenly terminated. He was forced to report to several government agencies and departments,<sup>8</sup> including to the "Purification Committee", established under the 1994 "Purge Law". The authors point out that that Law was enacted to counter black marketeering, drug trafficking and atheism. It allowed for strict monitoring and control of individuals' activities.

2.9 In August 2004, the first author was attacked by a dog, which he claims was deliberately set on him, and his arm was severely injured. Although a number of people witnessed the incident, no one was willing to drive him to hospital, and he was forced to

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<sup>6</sup> That information later proved to be false.

<sup>7</sup> The authors name the person.

<sup>8</sup> The authors annex several documents entitled "requests for attendance" (in Arabic), requesting the first author to appear before the "Purification Committee" and the Municipality Guard at various dates.

walk for several hours to get there. When he finally reached the hospital, no doctor was willing to assist him, until a Palestinian doctor gave him the necessary treatment.

2.10 The second author, Afaf El Hojouj, was harassed on several occasions, as well as verbally and physically abused, by staff members of the Secretariat of the Ministry of Education, where she was working. She was regularly followed home, and received threats. On 18 October 2003, she was approached by an individual who shouted at her “Why should I let you stay in this office? You should be fired, with your son injecting Libyan children with HIV/AIDS!” The second author locked herself in her office, but the individual waited for her outside, and, when she opened her office door, he spat at her and used abusive language and threats. He followed her home, and threatened to kill her and members of her family. The second author sought police protection, reporting the incidents on 23 October 2003 to the police,<sup>9</sup> and also lodged several complaints before the Ministry of Education. It is further claimed that she lodged complaints with the Public Prosecutor and the Gaddafi International Charity and Development Foundation, which remained unanswered.

2.11 On one occasion when the third author, Abeer El Hojouj, was sitting an examination, special agents under the direction of Lieutenant-Colonel J.A.M. (see para. 2.7) sought to evacuate the examination hall, shouting that there was an “AIDS patient” in the room. The third author was threatened that she would never pass her examinations, and the special agents stirred up hostility among her teachers and fellow students against her.

2.12 It is further submitted that the fourth author, Darin El-Hojouj, who was her brother Ashraf’s lawyer, was attacked and threatened on several occasions. On 4 April 2000, while she was walking home from work, two men in a military vehicle followed her and attempted to kill her. On 16 April 2000, while she was working at her law firm in Tarhuna, two men who identified themselves as members of the secret police entered her office, and threatened her that unless she stopped investigating her brother’s case, she would “become the next victim”. On 25 April 2000, while the fourth author was walking to court, the driver of a car without a number plate attempted to run her over. She was also once refused entry to an oral examination in human rights law by a university examiner on the grounds that she was the sister of “the person who brought HIV/AIDS to Libya”. She was later harassed to such an extent that she had to move to Tripoli. She moved into the same student residence as her sister Abeer El Hojouj (third author), in Al-Qarnaj. Both the third and fourth authors continued to be regularly harassed by fellow students living in the accommodation, forcing them to stay inside their dormitories and hide from the outside world.<sup>10</sup>

2.13 The fifth author, Amel El-Hojouj, was studying English at Nasir University in Tarhuna. She claims that she was harassed by several members of the Revolutionary Committees, who believed that, as the sister of Ashraf El-Hojouj, she had no right to study at Nasir University. For two years, they exerted pressure on her teachers to have her fail her examinations. Amel El-Hojouj was eventually expelled from university. She then found a job in a photography shop in the shopping centre in Tarhuna. One day when she was working there, a truck suddenly drove into the shop. She was rescued from the rubble and left unconscious for seven hours. Upon discovering that she was the sister of Ashraf El-Hojouj, none of the doctors available at the Tarhuna Hospital would provide her with the

<sup>9</sup> A copy of her complaint is annexed.

<sup>10</sup> The authors annex a press statement dated 22 December 2004 from the Organization for Peace and Liberty issued in support of the fourth author. The statement notes “the serious campaign of slander against the honour of the family”, and that Darin El-Hojouj “has been attacked in order to destroy her reputation and damage her socially and professionally, as a means of exerting pressure on her brother to withdraw his statements.”

necessary medical care. The family ultimately travelled to Tripoli, where Amel El-Hojouj received medical treatment. However, there has been permanent damage to her knee owing to the delay.

2.14 The sixth author, Eman El-Hojouj, was studying in the department of Mathematics in the Faculty of Educational Science at Nasir University in Tarhuna. It is claimed that she too encountered intimidation, and that pressure was exerted from the Revolutionary Committees on teachers to have her fail several subjects. On the campus, she was humiliated and harassed, which caused her psychological problems, leading her parents to transfer her to the Al-Fateh University in Tripoli (Faculty of Physics). She too joined her sisters at the student residence in Al-Qarnaj, Tripoli. Even though she performed outstandingly, the dean of the University, who was a member of the Revolutionary Committees, failed her in several examination subjects. After the verdict of the Court in the case of Ashraf El-Hojouj, Eman El-Hojouj was expelled from the University altogether, just before her expected graduation date.

2.15 The authors submit that during the trial of Ashraf El-Hojouj, they came under extreme pressure. Further to the death sentence handed down on 6 May 2004 by the Criminal Court in Benghazi against Ashraf El-Hojouj,<sup>11</sup> the first and second authors went on hunger strike in order to generate worldwide media attention. Lieutenant-Colonel J.A.M. (see para. 2.7) and his officers gathered a large mob of around 300 individuals, who surrounded the authors' apartment to terrorize them and coerce them to leave. It is further submitted that the crowd committed arson, threw stones and proffered death threats against the authors. The authorities also cut off the authors' water, electricity and telephone line, making their living conditions unbearable. The authors complained to the relevant authorities, to no avail. According to the authors, such reprisals were conducted under the "Charter of Honour". During that period, they would be routinely attacked in the streets by the mob which constantly surrounded their building, as well as by the secret police. The family had to keep the apartment windows and shutters closed, and take turns to sleep in the most protected room of the house. They would leave the apartment early in the morning to buy necessities.

2.16 In the summer of 2004, a few weeks after the first verdict in the criminal trial of Ashraf El-Hojouj, the first and second authors were ordered to report to a military encampment of the Special Forces. Anticipating that they would be detained, tortured or even executed there, they refused to comply with the order and contacted international relief organizations and embassies of European countries in Tripoli, which they believe resulted in the withdrawal of the order by the Libyan authorities. A friend warned the first and second authors that all other tenants in their building were being evacuated, and that they would soon be killed. The first and second authors left the building and moved to Tripoli during the autumn of 2004, leaving all their belongings behind, including many important documents, such as correspondence between the authors and the Palestinian embassy and several international organizations. In Tripoli, the family managed to rent an apartment. They adopted pseudonyms, and tried to avoid contact with the outside world, remaining anonymous and unnoticed. The United Nations High Commissioner for Refugees (UNHCR) assisted them in paying their rent. After two months, however, they were again identified and tracked down by the Libyan secret service, which started spreading new rumours as to their alleged activities for the secret services of the United States of America and Israel. The situation deteriorated once more, to the extent that the family once again feared for their safety and their lives.

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<sup>11</sup> For having caused the death of 46 children and contaminated 380 children with the HIV/AIDS virus.

2.17 On 19 May 2005, UNHCR determined that the authors qualified as refugees.<sup>12</sup> On 13 December 2005 the authors arrived in the Netherlands as invited refugees.

2.18 Regarding the exhaustion of domestic remedies, the authors contend that they approached all the relevant authorities. When the second author was attacked at her workplace, the authors reported it at the police station and subsequently sent letters of complaint to the Secretary of Education in Tarhuna, the Minister of Justice and Safety and the Gaddafi International Charity and Development Foundation.<sup>13</sup> However, none of those institutions ever answered their complaints or acted upon them. Similar reports and complaints, regarding other incidents, yielded similar results. The authors add that, when they officially reported to the authorities, they were never provided with copies of their complaints or supporting documents. They also add that they had to leave their residence in a hurry, and were therefore unable to take with them a number of important documents and correspondence. As they were leaving Tarhuna for Tripoli under new identities, they also preferred not to carry with them any documentation which might have enabled their identification.

2.19 The authors further contend that the remedies available to them were, and continue to be ineffective, offering no reasonable prospect of redress.<sup>14</sup> They add that, even if they had been given the opportunity to submit their complaint to a court, they would not have been offered a fair hearing.<sup>15</sup> No lawyer was willing to act on their behalf, for fear of reprisals, as the acts in question were deliberately caused, or instigated by, the official authorities. The authors also recall that they were threatened and kept under surveillance. Finally, they stress that they contacted several diplomatic representations in Libya to alert them to their situation. The fact that the authors fled Libya when the violations against them were at their worst, after they had been recognized as refugees, represented yet another obstacle preventing them from exhausting domestic remedies.

### **The complaint**

3.1 The authors claim that the treatment they were subjected to was intentionally inflicted to punish them for the acts which Ashraf El-Hojouj was suspected of having committed, with the purpose of intimidating them, as his close relatives, and coercing them into leaving. According to the authors, the daily attacks inflicted on them, both physical and psychological, as well as acts of harassment, persecution and humiliation, reach the threshold of cruel, inhumane and degrading treatment, in violation of article 7 of the Covenant. They recall that they routinely had stones thrown at them, and were insulted and humiliated. They add that the application of the "Charter of Honour" to them was a form of collective punishment, which they submit also constitutes cruel, inhumane and degrading punishment.<sup>16</sup>

3.2 The authors also highlight the anguish and stress caused by the fact that they were denied contact with Ashraf El-Hojouj during his incommunicado detention from his arrest on 29 January 1999 until 30 November 1999; and by the protracted uncertainty concerning his fate and whereabouts, including the fact that they were given the false information that

<sup>12</sup> Certificates available in the files of the secretariat.

<sup>13</sup> Complaints available in the files of the secretariat.

<sup>14</sup> The authors refer to communications No. 437/1990, *Colamarco Patiño v. Panama*, views adopted on 21 October 1994, para. 5.2, and Nos. 210/1986 and 225/1987, *Pratt and Morgan v. Jamaica*, views adopted on 6 April 1989, para. 12.3.

<sup>15</sup> The authors refer to communications No. 1295/2004, *El Alwani v. Libyan Arab Jamahiriya*, views adopted on 11 July 2006, para. 3.1, and No. 1295/2004, *El Hassy v. Libyan Arab Jamahiriya*, views adopted on 24 October 2007, para. 3.6.

<sup>16</sup> The authors refer to the Amnesty International report (see footnote 3).

he had been hanged, and that they should stop looking for him. From December 1999 onwards, the authors were allowed to visit Ashraf. However, they claim that learning, on 6 May 2004, that he would be sentenced to death, after being subjected to a flagrantly unfair trial, only added to their despair. In addition, on 7 June 2005, the Tripoli Criminal Court acquitted the suspects accused of having inflicted torture upon Ashraf El-Hojouj. On 19 December 2006, a year after they fled Libya, the death sentence imposed upon Ashraf El-Hojouj was confirmed. The authors submit that the treatment of their son and brother Ashraf El-Hojouj also resulted in a violation of article 7 of the Covenant in their regard.<sup>17</sup>

3.3 The authors also claim that their right to personal security, as protected under article 9 of the Covenant, was violated,<sup>18</sup> referring to the death threats received, and the discrimination, intimidation, forced unemployment and harassment inflicted upon them. The authors further contend that the State party failed to meet its positive obligation to take reasonable and appropriate measures to protect them against the attacks, thereby exposing them to serious threats to their right to life, liberty and security of person. By not effectively investigating and adequately responding to such attacks, the State party has failed to fulfil its obligation to them under article 9 of the Covenant.

3.4 Regarding article 12 of the Covenant, the authors point to the difficulties they experienced from 1995 in renewing their residence permits in Libya, making it impossible to leave Libya, as a residence permit is a precondition for the issuance of an exit visa.<sup>19</sup> They add that they were forced to leave Tarhuna, and go into hiding in Tripoli. Ultimately, they were forced to leave Libya altogether. They therefore submit that the State party has breached article 12, paragraph 1, of the Covenant in their regard.<sup>20</sup>

3.5 The authors also invoke article 2, paragraph 1, read in conjunction with articles 7, 9, 12, 17 and 23, and 26, of the Covenant, stressing that there is substantial evidence of widespread discrimination by Libya against foreigners and migrant workers. They add that, with the purpose of discrimination, and on the basis of the authors' different race and national origin, the Libyan authorities breached articles 7, 9, 12, 17 and 23 in their regard. The State party failed to guarantee them protection from discrimination and equal treatment and equal protection before the law, and discriminated against them on the basis of their nationality and race.<sup>21</sup> The authors reiterate that they were persecuted specifically because they were foreigners, different from the local Libyan population in national origin.<sup>22</sup>

3.6 With respect to articles 17 and 23, the authors submit that the State party authorities failed to respect their right to enjoyment of their family life, privacy, honour and reputation, and to protect them against attacks thereon. They recall that they were routinely harassed,

<sup>17</sup> The authors refer to communication No. 107/1981, *Quinteros Almeida v. Uruguay*, views adopted on 21 July 1983.

<sup>18</sup> The authors refer to communication No. 468/1991, *Oló Bahamonde v. Equatorial Guinea*, views adopted on 20 October 1993, para. 9.2; and communication No. 314/88, *Bwalya v. Zambia*, views adopted on 14 July 1993, para. 6.4.

<sup>19</sup> The authors refer to the case of *El Dernawi v. Libyan Arab Jamahiriya* (communication No. 1143/2002, see footnote 2), para. 2.2.

<sup>20</sup> The authors refer to the Committee's general comment No. 27 on article 12 (freedom of movement).

<sup>21</sup> The authors refer to communication No. 196/1985, *Gueye and 742 other retired Senegalese members of the French army v. France*, views adopted on 3 April 1989, para. 9.5.

<sup>22</sup> The authors refer, inter alia, to the Committee's concluding observations of 6 November 1998 (CCPR/C/79/Add.101); to communications No. 488/1992, *Toonen v. Australia*, views adopted on 31 March 1994, para. 9; No. 28/1978, *Weisz v. Uruguay*, views adopted on 29 October 1980, para. 15; and No. 747/1997, *Des Fours Walderode v. The Czech Republic*, views adopted on 30 October 2001, para. 8.4.

<sup>22</sup> Communication No. 965/2000, *Karakurt v. Austria*, views adopted on 4 April 2002.



kept under surveillance, threatened and intimidated; that their house was besieged by some 300 individuals; and that their water and electricity supplies and telephone line were cut off. Additionally, they claim that the authorities wilfully sought to tarnish their honour and reputation by spreading false rumours about them, in order to generate public aversion in their regard. They also highlight the fact that the third, fourth, fifth and sixth authors were barred and expelled from their universities, resulting in a loss of income and prospects for personal development. Finally, they submit that their right to family unity was violated, as they were denied information on the fate of Ashraf El-Hojouj for several months, thereafter given false information on his fate, prevented from visiting him regularly and ultimately compelled to leave Libya, leaving him, their son and brother, in Libya. For those reasons, the authors submit that the State party violated articles 17 and 23 of the Covenant in their regard.

3.7 Finally, the authors submit that their allegations were not adequately and effectively investigated by the authorities, and that they were deprived of their right to lodge complaints against mistreatment, in violation of article 2, paragraph 3, of the Covenant. Furthermore, their complaints were not promptly and impartially investigated by the authorities.<sup>23</sup>

#### **Lack of cooperation from the State party**

4. On 21 July 2010, 28 June 2011, 2 November 2011, and 10 May 2012, the State party was requested to submit its observations on the admissibility and merits of the communication. The Committee notes that that information has not been received. It regrets the State party's failure to provide any information on the admissibility and/or merits of the authors' claims. It recalls that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and indicating the measures, if any, that have been taken by the State to remedy the situation. In the absence of a reply from the State party, the Committee must give due weight to those of the authors' allegations that have been properly substantiated.<sup>24</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 rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained, as required by article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 As to the authors' claims under article 2, paragraph 1, read in conjunction with articles 7, 9, 12, 17 and 23 of the Covenant, and under article 26 of the Covenant, the Committee finds that the authors have not demonstrated any difference in their treatment by comparison with other individuals under the State party's jurisdiction, on the basis of race

<sup>23</sup> The authors refer to the Committee's general comments No. 31, on the nature of the general legal obligation imposed on States Parties to the Covenant; No. 20, on article 7, and to communications No. 1416/2005, *Alzery v. Sweden*, views adopted on 10 November 2006, para. 11.7, and No. 1057/2002, *Tarasova v. Uzbekistan*, views adopted on 20 October 2006, para. 7.1.

<sup>24</sup> See, inter alia, communications No. 1913/2009, *Abushaala v. Libya*, views adopted on 18 March 2013, para. 6.1; and No. 1751/2008, *Aboussedra v. Libya*, views adopted on 25 October 2010, para. 4.

or nationality as they claim, or on any other ground. The Committee therefore concludes that the authors have failed to substantiate this allegation, and consequently declares this part of the communication inadmissible under article 2 of the Optional Protocol.

5.4 The Committee further took note of the authors' allegation with respect to the violation of their right to liberty of movement under article 12 of the Covenant, but considers that, other than referring to difficulties in renewing their residence permits as of 1995, the authors have failed to substantiate, for the purposes of admissibility, how the State party actually interfered with their liberty of movement, or prevented them from travelling within the territory, or from leaving the country, especially as it appears that they travelled to Tripoli, and were eventually able to leave Libya for the Netherlands in 2005, where they obtained refugee status. Accordingly, this part of the communication is also inadmissible under article 2 of the Optional Protocol. As regards freedom to choose their residence within the State party's territory, the Committee considers that the authors have sufficiently substantiated their claim that they were forced to leave Tarhuna and move to Tripoli, and declares this part of the communication admissible.

5.5 With regard to 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. 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.

5.6 With the exception of the parts declared inadmissible under article 2 of the Optional Protocol, the Committee declares the rest of the communication admissible, insofar as it appears to raise issues under articles 2, paragraph 3; 7; 9; 12; 17 and 23 of the Covenant.

#### *Consideration of the merits*

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

6.2 The Committee reaffirms its jurisprudence,<sup>25</sup> in which it stated that the burden of proof cannot rest solely on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence, and that frequently the State party alone has the relevant information. It is implied in article 4, paragraph 2, of the Optional Protocol that it is the State party's duty to investigate, in good faith, all allegations of violations of the Covenant made against it and its representatives, and to provide to the Committee the information available to it. In cases where the authors have made all reasonable attempts to collect evidence in support of their claims, and where further clarification depends on information exclusively in the hands of the State party, the Committee may consider the authors' allegations substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party.

6.3 In the present case, the Committee has taken note of the authors' claim that they were left without information of the fate and whereabouts of their son and brother, Ashraf El-Hojouj, from his arrest in January 1999 until 30 November 1999, and were provided with the false information that he had been hanged, while the authorities were detaining him incommunicado. The Committee finds that the anguish and distress resulting from the incommunicado detention of their son and brother Ashraf El-Hojouj, and the false information about his execution, constituted cruel, inhumane and degrading treatment, in violation of article 7 of the Covenant.

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<sup>25</sup> Communication No. 1412/2005, *Butovenko v. Ukraine*, views adopted on 19 July 2011, para. 7.3.

6.4 With respect to issues potentially arising under article 9, the Committee has taken note of the authors' allegation that, on account of the arrest and trial of Ashraf El-Hojouj, their close relative, they were subjected to intense pressure, intimidation, threats and attacks, notably on the basis of the "Charter of Honour" of 1997, which effectively authorized collective punishment for those found guilty of "collective crimes", and which the Committee has previously described as raising concerns under several articles of the Covenant, including articles 7, 9 and 16.<sup>26</sup> The Committee has taken note, in particular, of the various incidents described by the authors, aimed at maintaining them in a permanent state of fear. In the absence of any response from the State party seeking to refute such claims, the Committee can only conclude that the incidents were deliberately instigated, or at least acquiesced to, by the State party authorities.

6.5 The Committee recalls that, under article 9 of the Covenant, States parties must take appropriate measures in response to death threats against persons in the public sphere, and, more generally, protect individuals from foreseeable threats to life or bodily integrity proceeding from either governmental or private actors.<sup>27</sup> States parties must take both prospective measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury.<sup>28</sup> In the light of the multiple attacks against the security of the authors, which the State party has failed both to prevent and to investigate, the Committee concludes that article 9 of the Covenant was violated in respect of the authors.

6.6 The Committee took note of the authors' claim that during the autumn of 2004, for fear of being killed, they felt compelled to leave their home in Tarhuna and flee to Tripoli, where they lived in hiding. In the absence of any argument adduced by the State party to refute that claim, the Committee finds that the authors' rights under article 12, paragraph 1, of the Covenant were violated.

6.7 The Committee further took note of the authors' claim under article 17 of the Covenant, in the light of the daily incidents of harassment, surveillance, and intimidation against them; the apparently deliberate intention to damage their honour and reputation and incite public hostility towards them; and the punitive measures adopted against them on the basis of the "Charter of Honour", which included the deliberate disruption of their electricity and water supplies and the telephone line at their private domicile (paras. 2.3 and 2.15). The Committee further took note of the authors' contention that such measures were inflicted upon them because of their family ties with Ashraf El-Hojouj. The Committee concludes that the material before it reveals multiple unlawful interferences with the authors' privacy, family and home, as well as unlawful attacks against their honour and reputation, which amount to a violation of article 17 of the Covenant.

6.8 In the light of the above, the Committee will not consider the authors' claims based on the violation of article 23, paragraph 1, of the Covenant separately.

6.9 The authors invoke article 2, paragraph 3, of the Covenant, which imposes on States parties the obligation to ensure an effective remedy for all persons whose Covenant rights have been violated. The Committee attaches importance to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of rights violations. It refers to its general comment No. 31 (2004), in which it states that a State party's failure to investigate allegations of violations could in and of itself give rise to

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<sup>26</sup> CCPR/C/79/Add.101, para. 12.

<sup>27</sup> See communication No. 1560/2007, *Marcellana and Gumanoy v. Philippines*, para. 7.7.

<sup>28</sup> See communication No. 821/1998, *Chongwe v. Zambia*, views adopted on 25 October 2000, para. 5.3; No. 1250/2005, *Lalith Rajapakse v. Sri Lanka*, para. 9.7; and No. 1432/2005 *Gunaratna v. Sri Lanka*, views adopted on 17 March 2009, para. 8.4.

a separate breach of the Covenant. In the present case, although the authors reported several incidents to the relevant authorities, none investigated their complaints, including the complaint presented by the second author to the police, the Secretary of Education in Tarhuna and the Minister of Justice and Safety (para. 2.18). The Committee accordingly concludes that the facts before it disclose a violation of article 2 (para. 3), read in conjunction with articles 7, 9, 12 and 17 of the Covenant in respect of the authors.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose violations of articles 7, 9, 12 and 17, and of article 2, paragraph 3, read in conjunction with articles 7, 9, 12 and 17 of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, to conduct a thorough, in-depth investigation of their allegations; to prosecute those responsible for the violations committed against the authors; and to grant the authors appropriate redress, including compensation. The State party is, further, required to take action to prevent similar violations in 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 guarantee 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 case 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.

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