



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 1832/2008

#### Views adopted by the Committee at its 108th session (8-26 July 2013)

<i>Submitted by:</i>	Ibrahim Aboubakr Al Khazmi ( <i>deceased</i> ) and his son Khaled Ibrahim Al Khazmi (represented by Al-Karama for Human Rights and TRIAL (Track Impunity Always))
<i>Alleged victim:</i>	Ismail Al Khazmi (the authors' son and brother respectively), and the authors
<i>State party:</i>	Libya
<i>Date of communication:</i>	6 November 2008 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 5 December 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	18 July 2013
<i>Subject matter:</i>	Enforced disappearance
<i>Substantive issues:</i>	Right to life, prohibition of torture and cruel and inhuman treatment, right to liberty and security of person, right of all persons deprived of their liberty to be treated with humanity and dignity, recognition as a person before the law and right to an effective remedy
<i>Procedural issue:</i>	Lack of cooperation from the State party
<i>Articles of the Covenant:</i>	Articles 2 (para. 3), 6 (para. 1), 7, 9 (paras. 1-4), 10 (para. 1) and 16
<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 (108th session)**

concerning

#### **Communication No. 1832/2008\***

*Submitted by:* Ibrahim Aboubakr Al Khazmi (*deceased*) and his son Khaled Ibrahim Al Khazmi (represented by Al-Karama for Human Rights and TRIAL (Track Impunity Always))

*Alleged victim:* Ismail Al Khazmi (the authors' son and brother respectively), and the authors

*State party:* Libya

*Date of communication:* 6 November 2008 (initial submission)

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

*Meeting on 18 July 2013,*

*Having concluded* its consideration of communication No. 1832/2008, submitted to the Human Rights Committee by Ibrahim Aboubakr Al Khazmi and Khaled Ibrahim Al Khazmi 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. The original author of the communication, dated 6 November 2008, was Ibrahim Aboubakr Al Khazmi, a Libyan citizen, who claimed that his son, Ismail Al Khazmi, a Libyan citizen born in 1976 in Beni Al Walid, Libya, was a victim of violations by Libya of articles 2 (para. 3), 6 (para. 1), 7, 9 (paras. 14), 10 (para. 1) and 16 of the Covenant. The original author also claimed that he himself was a victim of a violation of articles 2 (para. 3) and 7 of the Covenant. After the death of the author, Khaled Abubakr Al Khazmi, brother of Ismail Al Khazmi, joined his father as author and formally pursued the procedure

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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, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabian Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

before the Committee (see para. 5.1 below). The authors are represented jointly by Al-Karama for Human Rights and TRIAL (Track Impunity Always).

### **Facts as submitted by the authors**

2.1 Ismail Al Khazmi, an oil engineer, was arrested by officials of the State Internal Security Agency (Al Amn Al-Dakhili) on 17 June 2006 at 11 a.m. at his workplace, the AGB Gas Company oil field in Mellitah, Sabratha, and taken to an unknown destination. According to his colleagues, who witnessed the arrest, the members of the Internal Security Agency did not show a warrant or provide Ismail Al Khazmi with any reasons for his arrest. Late at night on the same day, Mubarek Al Khazmi, brother of Ismail Al Khazmi, born in 1978, was arrested at the family home, and taken to Abu Salim prison in Tripoli.

2.2 Although the political activities of Ismail Al Khazmi (if any) are unknown, several factors indicate that he was perceived as a political opponent, and that this was what motivated his arrest by the internal security forces without reason, his secret detention and disappearance and the vetoing at the highest levels of any investigation into his death. The authors add that, within the State party, real or perceived political opposition often leads to harassment, pressure, threats, arbitrary deprivation of liberty, torture or murder for those seen to be opposing the regime, as well as their relatives, leading to a general failure to report human rights violations, for fear of retaliation against victims or their families. This general climate of fear has also inevitably affected the authors, especially considering the fact that Mubarek Al Khazmi, brother of Ismail Al Khazmi, was arrested at the same time. The original author, Ibrahim Aboubakr Al Khazmi, had also been subjected to direct threats and pressure as a result of his requests for information about Ismail Al Khazmi's death.

2.3 Since the arrest of Ismail Al Khazmi, his parents have unsuccessfully sought information about his fate. Despite various appeals by the family, the authorities (who acknowledged the detention of Mubarek, the younger brother) would neither acknowledge Ismail Al Khazmi's detention, nor give any other information about his fate. Witnesses saw Ismail Al Khazmi in the Asseka prison, Tripoli, where he was detained without being brought before a judicial officer or given the opportunity to challenge his detention. He was also denied all contact with his family or a lawyer.

2.4 Former co-prisoners also reported that Ismail Al Khazmi was repeatedly tortured. On 29 June 2006, after being tortured for several consecutive days, Ismail Al Khazmi was again severely beaten in his cell and suspended from the ceiling, in the presence of Tarek Al Marghini Al Tarhouni, an official of the internal security agency, who was in charge of the torture session. The three other officers inflicting the torture were Mohamed Al Kouache, Ahmed Al Fardjani and Fethi Al Qat. Later on the same day, Ismail Al Khazmi was taken away in a Peugeot vehicle to an unknown location, unconscious but still breathing.

2.5 On 1 May 2007, the original author was summoned to Asseka Prison by Commander Mustapha Al Maakef and informed of his son's death. The original author refused to sign a document to release the body for burial from the Tripoli Hospital morgue, demanding to know the date and circumstances of his son's death. Upon receiving only a confused response from the officer, he demanded that an autopsy be performed by a specialist of his choice. The authorities refused to allow an autopsy, which prompted the original author to contact a lawyer to demand one, and initiate proceedings against those responsible for his son's death. The Attorney-General, Mr. Mohamed Khalil, then summoned the senior internal security officers who were posted at Asseka Prison and implicated in the death, in order to hear them on the case. However, General Salih Rajab, the Secretary of the General People's Committee for General Security (in charge of the Ministry of Interior) opposed this, and refused to authorize an investigation.

2.6 The original author also contacted the Secretary of the General People's Committee for Justice (in charge of the Ministry of Justice) concerning his son's case. The Secretary replied, informing the original author that he had written to the Prosecutor General concerning the case of Ismail Al Khazmi. The original author was never informed of any legal proceedings ordered by the Prosecutor's office. On 11 June 2007, the original author submitted a request for a meeting to the Secretary of Justice, to no avail. Despite threats and pressure, the original author has subsequently refused to sign the administrative document releasing the body of Ismail Al Khazmi, until the truth concerning his son's death is known.

2.7 On 11 June 2007, Ismail Al Khazmi's case was presented to the Special Rapporteurs on Torture and on Summary Executions.<sup>1</sup>

### **The complaint**

3.1 The authors claim that they did everything possible to find out what had happened to Ismail Al Khazmi. They pursued all administrative avenues open to them, in particular seeking an autopsy of Ismail Al Khazmi's body, to no avail, as their efforts were obstructed at the highest levels of government. Judicial remedies would have been ineffective owing to the non-independence of the judiciary, and unavailable owing to a widespread fear of reprisals. Accordingly, the authors conclude that judicial remedies were de facto unavailable in this case.

3.2 Ismail Al Khazmi was subjected to enforced disappearance after his arrest on 17 June 2006, and this was followed by a refusal to acknowledge his deprivation of liberty. The authors recall the definition of "enforced disappearance" as set forth in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance and in article 7, paragraph 2 (i), of the Rome Statute of the International Criminal Court.

3.3 As a victim of enforced disappearance, Ismail Al Khazmi was de facto prevented, in violation of article 2, paragraph 3, of the Covenant, from exercising his right of recourse to challenge the lawfulness of his detention. His relatives did everything in their power to find out what had happened to him, but the State party took no follow-up action, despite its obligation to provide an effective remedy, including through the conduct of an effective investigation.<sup>2</sup>

3.4 The enforced disappearance of Ismail Al Khazmi constituted, in and of itself, a serious threat to his right to life, insofar as the State party failed in its obligation to protect that fundamental right.<sup>3</sup> In addition, the State Party, through its internal security agents, violated Ismail Al Khazmi's right to life by causing his death in detention. The authors state that it was the State party's duty to protect Ismail Al Khazmi's right to life in detention, in view of the responsibility a State takes on by arresting and detaining an individual.<sup>4</sup> Accordingly, the death of Ismail Al Khazmi in detention raises a presumption that the State party's agents holding him bear responsibility for his death. This is especially so in a case

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<sup>1</sup> On 28 June 2007, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture submitted a joint allegation letter to the Government of the State party, seeking clarifications on the case of Ismail Al Khazmi. No response was received from the State party.

<sup>2</sup> See communication No. 612/1995, *Vicente et al. v. Colombia*, Views adopted on 29 July 1997.

<sup>3</sup> The authors refer to the Committee's general comment No. 6 on article 6 of the Covenant (*Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40)*, annex V).

<sup>4</sup> The authors refer to communication No. 763/1997, *Lantsova v. Russian Federation*, Views adopted on 26 March 2002, para. 9.2.

such as the present one, where parties do not have equal access to the evidence.<sup>5</sup> According to the authors, the burden to rebut such a presumption, and to provide an alternative explanation for the death of Ismail Al Khazmi rests upon the State party. Ismail Al Khazmi was last seen alive after a particularly severe incident of torture, and taken away in a critical condition by security agents. The original author was subsequently notified of his son's death. From these facts, a reasonable inference can be drawn that the victim's death was caused by the torture he suffered at the hands of State security officers. The State has subsequently failed to undertake an investigation, or even provide an explanation for his death. Accordingly, the State party must be held responsible for a breach of Article 6(1) of the Covenant vis-à-vis Ismail Al Khazmi.

3.5 With regard to Ismail Al Khazmi, the mere fact of being subjected to enforced disappearance constitutes inhuman or degrading treatment,<sup>6</sup> which is a violation of article 7 of the Covenant. Ismail Al Khazmi was a victim of enforced disappearance as, following his arrest, he was taken to an undisclosed location by State security officers, after which the authorities would not acknowledge his detention. He was denied any communication with his family or with a lawyer as well as any judicial scrutiny of his detention. Despite numerous attempts, his family was unable to obtain any information on his whereabouts. In addition to the enforced disappearance, according to eye-witnesses, Ismail Al Khazmi was repeatedly beaten and tortured while in Asseka Prison. On the last occasion when he was seen alive by fellow prisoners, internal security officers beat him severely in his cell, as on several consecutive days before, and suspended him from the ceiling. As a result, Ismail Al Khazmi lost consciousness and was taken away. According to the authors, this treatment undoubtedly constitutes a violation of article 7 of the Covenant with respect to Ismail Al Khazmi.

3.6 From the perspective of the authors, the victim's disappearance has been a paralysing, painful and distressing ordeal, since the family have had no news of him since his arrest on 17 June 2006, until they were informed of his death on 1 May 2007.<sup>7</sup> In addition, his relatives continue to suffer psychologically as a result of the authorities' refusal to disclose or investigate the circumstances of his death. Although Ismail Al Khazmi is no longer considered as disappeared, as his death has been confirmed, his family is still experiencing anguish comparable to that caused by disappearance, as it remains unable to obtain information about Ismail Al Khazmi's fate, and the circumstances of his death. The authors accordingly submit that the mental suffering caused by the State's refusal to clarify the circumstances of Ismail Al Khazmi's death also amounts to a continuing breach of article 7 of the Covenant in his regard.

3.7 Ismail Al Khazmi was arrested by the internal security forces without a warrant and without being informed of the reasons for his arrest. This is a breach of article 9, paragraph 1, of the Covenant. He was then arbitrarily detained and has been held incommunicado ever since his arrest on 17 June 2006. He has never been brought before a judicial authority and his detention has never been acknowledged. The authors recall the Committee's jurisprudence according to which the unacknowledged detention of any individual is deemed to be a very serious breach of article 9.<sup>8</sup>

<sup>5</sup> The authors refer to communication No. 888/1999, *Telitsin v. Russian Federation*, Views adopted on 29 March 2004, para. 7.5.

<sup>6</sup> See communication No. 449/1991, *Mojica v. Dominican Republic*, Views adopted on 15 July 1994; communication No. 540/1993, *Celis Laureano v. Peru*, Views adopted on 25 March 1996; and communication No. 542/1993, *Tshishimbi v. Zaire*, Views adopted on 25 March 1996.

<sup>7</sup> See communication No. 107/1981, *Quinteros v. Uruguay*, Views adopted on 21 July 1983.

<sup>8</sup> See communication No. 612/1995, *Vicente et al. v. Colombia* (see Note 3 above); communication No.

3.8 It is furthermore claimed that Ismail Al Khazmi was kept isolated from the outside world during his detention, and was not treated with humanity and with respect for the inherent dignity of the human person, and that he is therefore the victim of a violation of article 10, paragraph 1, of the Covenant.

3.9 As a victim of unacknowledged detention and, as such, a person deprived of the protection of the law, Ismail Al Khazmi has also been reduced to the status of “non-person”, in violation of article 16 of the Covenant.

#### **Authors’ additional information**

4.1 On 2 June 2010, the authors submitted a copy of a report dated 26 March 2009 from the Chief Prosecutor (signed by the Advocate General), addressed to the Secretary of the General People’s Committee for Justice. The content of this report can be summarized as follows: On the evening of 30 June 2006, the Chief Prosecutor was informed of the death of Ismail Al Khazmi. In the early hours of 1 July 2006, a member of the Special Prosecutor’s Office went to the hospital, examined the body, took note of the wounds, took photographs, and demanded that an autopsy be carried out. After examining the room in which the deceased had been interrogated, the member of the Special Prosecutor’s Office noted his observations in a report. He was informed of the decision of the Chief of the internal security agency to set up a commission of inquiry into the death of Ismail Al Khazmi.

4.2 The report further provides that on 15 November 2006, the autopsy report concluded that the direct cause of Ismail Al Khazmi’s death was a heart attack, due to a pathological heart condition, and that the wounds suffered by the victim had probably contributed physically and psychologically to his death. After pursuing his investigation, the Prosecutor’s Office requested authorization from the Secretary of the General People’s Committee for General Security (equivalent of the Minister of Interior), to direct his investigation into three officers of the internal security agency for their direct involvement in the victim’s death. On 2 April 2007, this request for investigation was denied by a letter from the Secretary of the General People’s Committee for General Security.

4.3 According to the Chief Prosecutor’s report, on 30 April 2007, the original author made a request to the Prosecutor’s Office to recover his son’s body, which was granted. On 5 May 2007, the original author refused to take possession of the body, verbally stating that the cause of his son’s death was the torture inflicted upon him. The original author further requested that a new autopsy be carried out by a commission of forensic specialists, without the presence of the doctor who had written the first autopsy report. This request was accepted on the same day by the Prosecutor’s Office.

4.4 On 19 September 2007, the Prosecutor’s Office received the second autopsy report, which concluded that death was due to injuries inflicted with a hard, blunt object of some sort, which resulted in bruising and contusions all over the body, with subcutaneous hæmorrhage and tearing of the muscles at the site of injury. This caused pathological changes in the kidneys and a deficiency of fluids in the body. As a result, blood circulation and respiration ceased. A communication was sent to the internal security agency to notify the victim’s family of the need to recover Ismail Al Khazmi’s body. On 17 March 2009, the original author once again refused to recover his son’s body without knowing the exact

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542/1993, *Tshishimbi v. Zaire* (see Note 7 above); communication No. 540/1993, *Celis Laureano v. Peru* (see Note 7 above); communication No. 563/1993, *Bautista v. Colombia*, Views adopted on 27 October 1995; communication No. 181/1984, *Arévalo Pérez v. Colombia*, Views adopted on 3 November 1989; communication No. 139/1983, *Conteris v. Uruguay*, Views adopted on 17 July 1985; communication No. 8/1977, *Weismann and Perdomo v. Uruguay*, Views adopted on April 1980; and communication No. 56/1979, *Casariago v. Uruguay*, Views adopted on 29 July 1981.

causes of his death, or the identity of those who caused his death. On an unknown date, the Prosecutor's Office decided that no criminal action would be taken against the suspects, in the absence of proper authorization from the General People's Committee for General Security (Ministry of Interior).

4.5 The authors assert that this document confirms their initial complaint. Their contention that Ismail Al Khazmi was arrested on 17 June 2006 is compatible with the mention, in the report, that the victim died on 30 June 2006, while in the custody of the internal security forces.<sup>9</sup> The report also confirms the authors' assertion that, although the Prosecutor's Office requested the launch of an investigation into Ismail Al Khazmi's death, this request was obstructed by the General People's Committee for General Security, which refused to authorize the investigation. According to the authors, this shows the lack of independence of the judiciary vis-à-vis the executive, and the practical impossibility for the authors to have the rights of Ismail Al Khazmi, and their own rights, including their right to an effective remedy, guaranteed within the State party. The authors reiterate all of their remaining contentions on the merits of their case.

#### **Authors' further submission**

5.1 On 1 July 2013, the authors' counsel informed the Committee that the original author had died approximately six months earlier. His son, Khaled Ibrahim Al Khazmi, had agreed to pursue the procedure before the Committee on behalf of his brother Ismail Al Khazmi.

5.2 The authors' counsel further informed the Committee that the family has never managed to recover Ismail Al Khazmi's body, which disappeared from the morgue where it was being kept. The family still does not know the circumstances in which Ismail Al Khazmi's body disappeared, or whether, where or when it was buried. Nor has a prosecution taken place in relation to the circumstances of Ismail Al Khazmi's disappearance and death.

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

6. On 5 December 2008, 24 July 2009, 6 May 2010, and 25 January 2011, the State party was requested to submit its observations on the admissibility and merits of the communication. The Committee notes that this 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>10</sup>

<sup>9</sup> The authors also refer to a report by Human Rights Watch, "Truth and Justice can't wait – Human Rights Developments in Libya amid institutional obstacles" (December 2009), in which it is stated that Ismail Al Khazmi died under torture after having been arrested in June 2006.

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

## Issues and proceedings before the Committee

### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

7.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee must ascertain that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the case of Ismail Al Khazmi was reported to the Special Rapporteurs on Torture and Summary Executions. However, it recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights Council, and whose mandates are to examine and report publicly on human rights situations in specific countries or territories, or cases of widespread human rights violations worldwide, do not generally constitute an international procedure of investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.<sup>11</sup> Accordingly, the Committee considers that it is not precluded from examining the case under this provision.

7.3 With regard to the exhaustion of domestic remedies, the Committee reiterates its concern that, in spite of three reminders having been 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.

7.4 The Committee considers that the authors' allegations have been sufficiently substantiated for purposes of admissibility, and proceeds to its consideration on the merits in respect of the claims made on behalf of Ismail Al Khazmi under articles 2 (para. 3), 6 (para. 1), 7, 9 (paras. 1-4), 10 (para. 1) and 16 of the Covenant, and on his own behalf under articles 7 and 2 (para. 3) of the Covenant.

### *Consideration of the merits*

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it, as required under article 5, paragraph 1, of the Optional Protocol. It notes that the State party has not replied to the authors' allegations. In the circumstances, due weight must be given to their allegations to the extent that they have been sufficiently substantiated.

8.2 The Committee notes the claim of the authors that Ismail Al Khazmi was arrested on 17 June 2006 at his workplace by members of the internal security forces, and taken to an unknown destination, in the presence of a number of witnesses. The Committee notes that the family has never received any official confirmation of the place of detention of Ismail Al Khazmi. It recalls that, in cases of enforced disappearance, the act of deprivation of liberty, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate of the disappeared person, denies the person the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.<sup>12</sup> In addition to the victim's enforced disappearance, the Committee has taken note of the authors'

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<sup>11</sup> See, inter alia, communications Nos. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 7.2; and 540/1993, *Celis Laureano v. Peru* (see Note 7 above), para. 7.1.

<sup>12</sup> See, inter alia, communication No. 1779/2008, *Mezine v. Algeria*, Views adopted on 25 October 2012, para. 8.4; communication No. 1753/2008, *Guezout et al. v. Algeria*, Views adopted on 19 July 2012, para. 8.4; and communication No. 1781/2008, *Berzig v. Algeria* (see Note 15 above), para. 8.4.



assertion that Ismail Al Khazmi was last seen alive on 29 June 2006, after a severe incident of torture, further to which he was taken by security agents to an unknown location in a critical condition; and that his death was reported to his family by the prison authorities on 1 May 2007. The Committee, recalls, in accordance with its jurisprudence, that the burden of proof cannot rest solely with the authors of the communication, especially when the authors and the State party do not have equal access to the evidence and when the State party is often in sole possession of the relevant information, such as information related to Ismail Al Khazmi's custody, and relevant forensic evidence.<sup>13</sup> The Committee gives due weight to the evidence submitted by the authors, consisting of a report of the Prosecutor's Office dated 26 March 2009, which provides that an autopsy report concluded that Ismail Al Khazmi's death was the consequence of severe injuries suffered by the victim as a result of multiple violent blows to his body with a blunt object. When it received the report, the General People's Committee for General Security refused to open a criminal case against the suspects involved in Ismail Al Khazmi's death. Accordingly, the Committee considers that the inescapable conclusion is that the State party has violated Ismail Al Khazmi's right to life, in breach of article 6, paragraph 1, of the Covenant.

8.3 The Committee recognizes the degree of suffering caused by being held indefinitely without contact with the outside world. It recalls its general comment No. 20 (1992) on article 7<sup>14</sup>, in which it recommends that States parties should make provision against incommunicado detention. It notes in the instant case that Ismail Al Khazmi was arrested on 17 June 2006 and was taken to an undisclosed location by State security officers, after which he was denied any communication with his family. Despite numerous attempts, his family was unable to obtain any information as to his whereabouts. In addition, Ismail Al Khazmi was beaten and tortured while in Asseka Prison, resulting in his death on 30 June 2006, according to an official report from the Prosecutor's Office. The State party has not adduced any information to contradict these facts. The Committee concludes that the incommunicado detention, and lethal torture inflicted on Ismail Al Khazmi constitute multiple violations of article 7 of the Covenant.

8.4 Having reached that conclusion, the Committee decides not to address the authors' allegations under article 10 of the Covenant.

8.5 The Committee also takes note of the anguish and distress caused to the authors by Ismail Al Khazmi's disappearance, followed by a confirmation, only 10 months after its occurrence, of the death of Ismail Al Khazmi. Instead of immediately informing the authors of the death of Ismail Al Khazmi, and launching a thorough investigation with a view to prosecuting the perpetrators, the State party's authorities left the authors without any information about the fate of their relative for 10 months, when they knew that he had died on 30 June 2006, as a result of severe torture inflicted upon him in the Assaka prison. The Committee considers that the facts before it disclose a violation of article 7 of the Covenant, read alone and in conjunction with article 2, paragraph 3, with regard to the authors.<sup>15</sup>

<sup>13</sup> See, inter alia, communication No. 888/1999, *Telitsin v. Russian Federation* (see Note 6 above), paras. 7.5 and 7.6.

<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 communication No. 1913/2009, *Abushaala v. Libya*, Views adopted on 18 March 2013, para. 6.4; No. 1905/2009, *Ouaghlissi v. Algeria*, Views adopted on 26 March 2012, para. 7.6; communication No. 1781/2008, *Berzig v. Algeria* (see Note 15 above), para. 8.6; and communication No. 1640/2007, *El Abani v. Libyan Arab Jamahiriya*, Views adopted on 26 July 2010, para. 7.5.

8.6 With regard to the alleged violation of article 9, the Committee notes the authors' statement that Ismail Al Khazmi was arrested on 17 June 2006 by members of the internal security forces; that he was arrested without a warrant and without being informed of the reasons for his arrest; that Ismail Al Khazmi was neither informed of the charges against him nor brought before a judicial authority through which he would have been able to challenge the lawfulness of his detention; and that no official information was given to the authors regarding the victim's place of detention or his fate. In the absence of a satisfactory explanation from the State party, the Committee finds that there has been a violation of article 9 with regard to Ismail Al Khazmi.<sup>16</sup>

8.7 With regard to the alleged violation of article 16, the Committee reiterates its established 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 recognize that person as a person before the law, if the victim was in the hands of the State authorities when last seen, and if the efforts of his or her relatives to obtain access to potentially effective remedies, including judicial remedies, have been systematically impeded.<sup>17</sup> The Committee recalls that Ismail Al Khazmi was arrested on 17 June 2006, and detained, in circumstances which the Committee has found to be arbitrary. He was then subjected to an enforced disappearance, which continued until 1 May 2007, when his family was informed that he had died, and during which he had been subjected to acts of torture which caused his death on 30 June 2006, according to a report of the Office of the Chief Prosecutor. No official investigation was carried out into the circumstances of his death, and no prosecution was initiated. The Committee is of the view, in the circumstances, that Ismail Al Khazmi's right to recognition as a person before the law was violated as a result of his intentional removal from the protection of the law, in breach of article 16 of the Covenant.

8.8 The authors invoke article 2, paragraph 3, of the Covenant, under which States parties have an obligation to ensure an effective remedy for all persons whose Covenant rights have reportedly 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) on the nature of the general legal obligation imposed on States parties to the Covenant,<sup>18</sup> according to which the 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 instant case, the authors initiated legal proceedings, sought the intervention of the General People's Committee for Justice, and requested the initiation of criminal proceedings against suspects in the death of Ismail Al Khazmi after the second autopsy report, which established that he had died as a result of torture, became available. However, all their efforts were to no avail, and the State party failed to conduct a prompt, thorough and impartial investigation and prosecute the perpetrators, despite the presentation of clear evidence from its own authorities, that Ismail Al Khazmi died as a result of torture inflicted while he was in the State party's custody. The Committee concludes that the facts before it reveal a violation of article 2 (para. 3), read in conjunction with articles 6 (para. 1), 7, 9 and 16 of the Covenant with regard to Ismail Al Khazmi, and of article 2 (para. 3), read in conjunction with article 7 of the Covenant, with respect to the authors.

<sup>16</sup> See, inter alia, communication No. 1913/2009, *Abushaala v. Libya*, Views adopted on 18 March 2013, para. 6.5, No. 1905/2009, *Ouaghlissi v. Algeria* (see Note 18 above), para. 7.7, and communication No. 1781/2008, *Berzig v. Algeria* (see Note 15 above), para. 8.7.

<sup>17</sup> Communication No. 1328/2004, *Kimouche v. Algeria*, Views adopted on 10 July 2007, para. 7.8.

<sup>18</sup> *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses violations by the State party of articles 6 (para. 1), 7, 9, and 2 (para. 3), read in conjunction with articles 6 (para. 1), 7, 9 and 16 of the Covenant with regard to Ismail Al Khazmi; and of article 7, read alone and in conjunction with article 2 (para. 3) of the Covenant, with respect to the authors.

10. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the authors with an effective remedy by, inter alia: (a) conducting a thorough, prompt and impartial investigation into the disappearance and death of Ismail Al Khazmi; (b) providing his family with detailed information on the results of its investigation; (c) handing over Ismail Al Khazmi's remains to his family; (d) prosecuting, trying and punishing those responsible for the violations committed; and (e) providing compensation to the authors, commensurate to the gravity of the offences committed. The State party is also under an obligation to take steps to prevent similar violations in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages 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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