

HUMAN RIGHTS COMMITTEE

Fiftieth session

VIEWS

Communication No. 440/1990

Submitted by: Youssef El-Megreisi

Victim: The author's brother Mohammed Bashir El-Megreisi

State party: Libyan Arab Jamahiriya

Date of communication: 27 December 1990

Documentation references:

Prior decisions

- Special Rapporteur's rule 91 decision, transmitted to the State party on 2 August 1991 (not issued in document form)
- CCPR/C/46/D/440/1990 (decision on admissibility, dated 16 October 1992)

Date of adoption of Views: 23 March 1994

On 23 March 1994, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect to communication No. 440/1990. The text of the Views is appended to the present document.

[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 -
fiftieth session**

concerning

Communication No. 440/1990

Submitted by: Youssef El-Megreisi

Victim: The author's brother Mohammed Bashir El-Megreisi

State party: Libyan Arab Jamahiriya

Date of communication: 27 December 1990

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

Meeting on 23 March 1994,

Having concluded its consideration of communication No. 440/1990, submitted to the Human Rights Committee by Mr. Youssef El-Megreisi on behalf of his brother, Mr. Mohammed Bashir El-Megreisi 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,

Adopts its Views under article 5, paragraph 4, of the Optional Protocol.

1. The author of the communication is Youssef El-Megreisi, a stateless individual of Libyan origin, born in Benghazi, Libya, in 1958, currently residing in the United Kingdom. He submits the communication on behalf of his brother, Mohammed Bashir El-Megreisi, a Libyan citizen, born in 1956, said to be unable himself to submit the communication. The author claims that his brother is the victim of violations of his human rights by Libya. The Optional Protocol entered into force for the Libyan Arab Jamahiriya on 16 August 1989.

The facts as submitted by the author

2.1 The author states that, in January 1989, his family home in Benghazi, where the family, including his brother, his brother's wife and their two children, lived, was searched at dawn. The intruders allegedly were members of the Mukhabarat, the Libyan security police. Mohammed El-Megreisi was asked to dress and accompany them, purportedly to assist in some unspecified security matter. He never returned. The author adds that "no one could visit his brother and no one was given any information about him".

2.2 The author claims that the security police falsely suspected his brother of active involvement in politics. No specific charges were brought against Mohammed El-Megreisi, nor was a trial ever held. The family could not trace him for approximately three years and feared that he had been tortured or killed, which is said to be the usual fate of political detainees in Libya.

2.3 In April 1992, the El-Megreisi family learned that he was still alive, since he was allowed a visit by his wife. According to Mrs. El-Megreisi, the Libyan authorities have told her husband that no charges against him exist and that they have no reason to keep him in detention other than for routine procedures. It is submitted that, during his wife's visit, Mohammed ElMegreisi could not comment on the conditions under which he is detained, nor on whether he has been subjected to torture or to other cruel, inhuman or degrading treatment, out of fear of punishment, as meeting places are allegedly bugged and conversations between visitors and prisoners recorded.

2.4 In a submission of September 1992, the author stated that, at that time, his brother was detained in a military camp in Tripoli; name and location of the camp were, however, unknown. The author reiterated that condition under which prisoners in Libya are detained are cruel and inhuman, without giving further details.

2.5 As to the requirement of exhaustion of domestic remedies, the author has stated, in his initial submission, that the Libyan authorities simply denied that they ever arrested his brother, even though his arrest had been witnessed by the family. In 1990, two London-based nongovernmental organizations requested the Libyan authorities to provide clarifications about Mr. El Megreisi's fate, but received no reply. It appears from the author's submissions, that local remedies are deemed to be both unavailable and ineffective.

The complaint

3. Although the author does not invoke specific provisions of the International Covenant on Civil and Political Rights, it appears from his submissions that he considers his brother to be the victim of a violation by Libya of articles 7, 9 and 10.

The Committee's admissibility decision

4.1 During its forty-sixth session, in October 1992, the Committee considered the admissibility of the communication. It noted with concern that in spite of two reminders addressed to the State party in January and July 1992, no information or observations on the admissibility of the communication had been received from the State party; nor did the State party provide information, as had been requested by the Committee's Special Rapporteur on New Communications on 2 August 1991, on the

whereabouts of Mr. Mohammed El-Megreisi since January 1989, and on his state of health. In the circumstances, the Committee found that it was not precluded from considering the communication under article 5, paragraph 2 (b), of the Optional Protocol.

4.2 On 16 October 1992, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 7, 9 and 10 of the Covenant.

Examination of the merits:

5.1 The Committee begins by noting that the Optional Protocol entered into force for the Libyan Arab Jamahiriya on 16 August 1989. It observes that it is not precluded from considering the present communication, since the events complained of by the author have continued after 16 August 1989.

5.2 In spite of a reminder addressed to it in October 1993, the State party did not provide any information in respect of the substance of the author's allegations, nor in respect of Mr. M. El-Megreisi's current whereabouts, state of health and conditions of detention, as requested in paragraph 6 (c) of the Committee's decision on admissibility. The Committee notes with regret and great concern the absence of cooperation on the part of the State party, both in respect of the admissibility and the substance of the author's allegations. It is implicit in article 4, paragraph 2, of the Optional Protocol and in rule 91 of the Committee's rules of procedure that a State party to the Covenant must investigate in good faith all the allegations of violations of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. The lack of cooperation from the State party prevents the Committee from fully discharging its functions under the Optional Protocol.

5.3 The Committee therefore bases its assessment on the undisputed facts that Mr. Mohammed El-Megreisi was arrested in January 1989, that no charges were or have been brought against him, and that he has not been released to date. In the opinion of the Committee, therefore, he has been subjected to arbitrary arrest and detention, and continues to be arbitrarily detained, contrary to article 9 of the Covenant.

5.4 Moreover, the Committee notes, from the information before it, that Mohammed El-Megreisi was detained incommunicado for more than three years, until April 1992, when he was allowed a visit by his wife, and that after that date he has again been detained incommunicado and in a secret location. Having regard to these facts, the Committee finds that Mr. Mohammed Bashir El-Megreisi, by being subjected to prolonged incommunicado detention in an unknown location, is the victim of torture and cruel and inhuman treatment, in violation of articles 7 and 10, paragraph 1, of the Covenant.

6. 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 disclose violations of articles 7, 9 and 10, paragraph 1, of the Covenant.

7. The Committee is of the view that Mr. Mohammed Bashir El-Megreisi is entitled, under article 2, paragraph 3 (a), of the Covenant, to an effective remedy. It urges the State party to take effective measures (a) to secure his immediate release; (b) to compensate Mr. Mohammed El-Megreisi for the torture and cruel and inhuman treatment to which he has been subjected and (c) to ensure that similar violations do not occur in the future.

8. The Committee would wish to receive information, within 90 days, on any relevant measures taken by the State party in respect of 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.]