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Communication No. 1880/2009

**Views adopted by the Committee at its 104th session,
12–30 March 2012**

<i>Submitted by:</i>	N.S. Nenova et al. (represented by counsel, Liesbeth Zegveld)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Libya
<i>Date of communication:</i>	31 March 2009 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 10 June 2009 (not issued in document form)
<i>Date of adoption of Views:</i>	20 March 2012
<i>Subject matter:</i>	Alleged torture of the authors; death penalty imposed after an unfair and discriminatory trial
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Torture, unfair trial, arbitrary arrest and detention; death penalty imposed following unfair trial, lack of effective remedy and discrimination
<i>Articles of the Covenant:</i>	2; 6; 7; 9; 10, paragraph 1; 14 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 (104th session)

concerning

Communication No. 1880/2009*

Submitted by: N.S. Nenova et al. (represented by counsel, Liesbeth Zegveld)

Alleged victims: The authors

State party: Libya

Date of communication: 31 March 2009 (initial submission)

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

Meeting on 20 March 2012,

Having concluded its consideration of communication No. 1880/2009, submitted to the Human Rights Committee by Ms. N.S. Nenova 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

1.1 The authors of the communication dated 31 March 2009 are Valya Georgieva Cherveniyashka, born on 22 March 1955, Snezhana Ivanova Dimitrova, born on 18 August 1952, Nasya Stoycheva Nenova, born on 2 July 1966, Valentina Manolova Siropulo, born on 20 May 1959 and Kristyana Venelinova Valcheva, born on 12 March 1959. They are all Bulgarian citizens. They claim to be victims of violations by Libya of articles 2; 6; 7; 9; 10, paragraph 1; 14 and 26 of the Covenant.¹ They are represented by Ms. Liesbeth Zegveld.

1.2 On 5 August 2009, the Committee, acting through its Special Rapporteur on new communications and interim measures, rejected the State party's request that it examine the admissibility of the communication separately from the merits.

* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kaelin, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

¹ The Optional Protocol entered into force for the State party on 16 May 1989.

Facts as presented by the authors

2.1 Other than Kristiyana Venelinova Valcheva, the authors arrived in Libya between February 1998 and February 1999 to work as members of a Bulgarian medical team at Al-Fatah paediatric hospital in Benghazi. Kristiyana Venelinova Valcheva had arrived in Libya in 1991 and had been working at the Hauari hospital in Benghazi for six years at the time of the events.

2.2 On 9 February 1999, the authors together with 18 other members of medical teams, all Bulgarian, were arrested by the Libyan police without being told of the grounds for their arrest. Their hands were tied behind their backs and they were gagged and blindfolded before being taken away in a bus. After several hours, during which some of them were hit on the head and neck, they arrived at the police station on Al-Nasr Street in Tripoli. Seventeen of the Bulgarians were released on 16 February 1999. The authors and Mr. Ashraf El-Hagog Jumaa² who had been arrested on 29 January 1999, were charged with murder on suspicion of having infected 393 children with the HIV virus at Al-Fatah hospital in Benghazi. The penalty they faced for that crime was death. Kristiyana Valcheva had never worked at Al-Fatah paediatric hospital.

2.3 Under interrogation, the authors were tortured into confessing. The methods used included frequent electric shocks to legs, feet, hands, chests and private parts while the women were tied naked to an iron bed. They also included beatings on the soles of the feet,³ being suspended by the hands and arms; suffocation; strangulation; being threatened with death; being threatened that family members would be harmed; being threatened, while blindfolded, that they would be attacked by dogs; beatings; being dragged across the ground by the hair; being burned with cigarettes; having biting insects placed on their bodies; injection of drugs; sleep deprivation; sensory isolation; being exposed to flames and ice-cold showers; being held in overcrowded and dirty cells; and being exposed to blinding lights. Some of the authors were also raped. Such torture allegedly continued for approximately two months. Once all the authors had confessed, the torture became less frequent but still continued.

2.4 On 15 May 1999, the case was referred to the People's Prosecution Office (*parquet populaire*) which charged the authors and their fellow defendant, Ashraf El-Hagog Jumaa, with acts against Libyan sovereignty leading to indiscriminate killing for the purpose of subverting State security (a capital offence); conspiracy and collusion to commit the above premeditated crimes; deliberately causing an epidemic by injecting 393 children at Al-Fatah hospital with the HIV virus (a capital offence); premeditated murder with lethal substances, by injecting children with HIV (a capital offence); and acts contrary to Libyan law and traditions (illegal production of alcohol, consumption of alcohol in public places, illegal foreign currency dealings and illicit sexual relations). On 16 May 1999, approximately four months after their arrest, the authors were brought before the People's Prosecution Office for the first time. They were subsequently brought before the prosecutor every 30–45 days.

The first trial

2.5 The trial before the People's Court (the extraordinary court for crimes against the State) began on 7 February 2000. The case rested on the confessions and an assertion by the Head of State that the accused were CIA and Mossad agents. Only on 17 February 2000, 10 days after the trial began, were the authors granted access to a lawyer and able to allege before the court that they had been tortured. They had been unable to do so previously

² See *El Hagog Jumaa v. Libya*, communication No. 1755/2007, Views adopted on 19 March 2012.

³ The *Falaqa* method.

because they had been threatened by their torturers and could not speak freely to their lawyer because State representatives were always present. In June 2001, two of the authors retracted their confessions, stating they had been extracted under torture.⁴ The Court rejected their complaint without ordering an inquiry. Subsequently, the authors and the co-defendant pleaded “not guilty”.

2.6 The case was initially suspended, because the Court had not gathered enough evidence to support the charge of conspiracy against the State. On 17 February 2002, the People’s Court halted proceedings and referred the case back to the Criminal Prosecution Office (*ministère public*). The prosecutor withdrew the conspiracy charges and presented new charges of illegal drug testing and the deliberate infection of 426 children with HIV.⁵ Throughout this time, the authors and the co-defendant remained in detention.

The second trial

2.7 In August 2002, the Indictments Chamber of the Benghazi Appeals Court upheld the charges presented by the prosecutor and referred the case to an ordinary criminal court, the Benghazi Appeals Court. The charges were based on confessions made by one of the authors⁶ and the co-defendant to the prosecutor and the results of a search of the home of another one of the authors,⁷ where the police allegedly discovered five bottles of contaminated blood plasma. The second trial started in July 2003. Professor Luc Montagnier and Professor Vittorio Colizzi were appointed as experts. In September 2003, they testified that the blood samples at Al-Fatah hospital had been infected in 1997, more than a year before the nurses had begun to work in the hospital and that infections had continued after their arrest. Their expert opinion was that the cause of the infection was unknown and not deliberate. Such nosocomial infections were caused by a very specific, highly infectious viral strain and by negligence and poor standards of hygiene.⁸ In December 2003, the Court appointed a second team of experts consisting of five Libyan doctors. On 28 December 2003, this second team rejected the findings made by the two renowned professors, stating that the HIV/AIDS epidemic was due not to nosocomial infections or the reuse of infected medical equipment, but to a deliberate act. The defence called for a further expert appraisal, but the Court dismissed the request.

2.8 On 6 May 2003, the Benghazi Appeals Court sentenced the authors and co-defendant to death for having caused the death of 46 children and infected 380 others. Nine Libyans working at Al-Fatah hospital had been charged with the same offence, but had been released on bail at the start of the proceedings and were not remanded in custody pending trial. They were acquitted. The Court announced it had no jurisdiction over the eight Libyan security officers accused of torture by the authors and the co-defendant, and returned their cases to the prosecutor’s office. On 5 July 2004, the authors and co-defendant appealed on points of law to the Libyan Supreme Court. The prosecutor asked the Court to revoke the death sentences and return the case to the Benghazi Appeals Court for a retrial, as there had been “irregularities” during the arrest and interrogation of the authors accused

⁴ Kristyana Valcheva and Nasya Nenova.

⁵ In the charges read out to the authors, the number of children infected rose from 393 to 426 between the first and the second trial.

⁶ Nasya Nenova.

⁷ Kristyana Valcheva.

⁸ “Final Report of Prof. Luc Montagnier and Prof. Vittorio Colizzi to Libyan Arab Jamahiriya on the Nosocomial HIV infection at the Al-Fatah Hospital, Benghazi, Libya, Paris, 7 April 2003”, which concludes: “No evidence has been found for a deliberate injection of HIV contaminated material (bioterrorism). Epidemiological stratification, according to admission time, of the data on seropositivity and results of molecular analysis are strongly against this possibility.”

and the co-defendant. After several postponements, the Supreme Court quashed the judgement of the Benghazi Appeals Court and returned the case for retrial to the Tripoli Court on 25 December 2005. The Court refused to release the authors and co-defendant on bail on the grounds that there were insufficient guarantees they would reappear for the retrial.

Retrial and release

2.9 The Tripoli Court reopened the trial on 11 May 2006. The prosecutor once again requested the death penalty for the authors and co-defendant. The authors again pleaded not guilty and reiterated that they had been tortured into making confessions. On 19 December 2006, they were again found guilty and sentenced to death. The Court stated it could not re-examine the torture allegations because another court had already dismissed them.

2.10 The authors appealed to the Supreme Court on 19 December 2006. The hearing before the Supreme Court took place on 11 July 2007, although it ought to have taken place within three months of the submission of the appeal. The authors allege that the Court held only one sitting, lasting a day, and upheld the death sentences. On 17 July 2007, the High Judicial Council announced that the sentence would be commuted to life imprisonment pursuant to a compensation agreement reached with the victims' families. Then on 24 July 2007 as a result of negotiations between Libya and Governments of other countries, the authors were transferred to Bulgaria to serve their sentences. Once there, they were immediately pardoned and released.

2.11 The torture claims made by the authors from 2000 onwards were not investigated.⁹ On 2 June 2001, two of the authors¹⁰ retracted their confessions, which they said had been obtained under duress and named those responsible for the torture. Only in May 2002 did the Criminal Prosecution Office decide to investigate the matter and order a medical examination. Consequently, charges were brought against eight members of the security services in charge of the investigation, plus a doctor and an interpreter. In June 2002, a Libyan doctor appointed by the prosecutor examined the authors and co-defendant and found marks on their bodies which he argued resulted from "physical restraint" or "beatings". In a ruling dated 6 May 2004, the Benghazi Appeals Court determined it was not competent to pronounce on the matter since the offence had not been committed within the area under its jurisdiction, but in the jurisdiction of the Tripoli Appeals Court.

2.12 On 7 May 2004, the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment sent an urgent appeal to the State party regarding the authors' and co-defendant's case, asking for information about the allegations of torture and an unfair trial. He also asked why the officials said to be responsible for the alleged torture had not been prosecuted.¹¹ In response, the State party stated that the Department of Public Prosecutions had referred the case of the police officers to the Tripoli Appeals Court as the only court competent to hear the case. The trial of the police officers, the doctor and the interpreter began there on 25 January 2005. During the hearings, officers admitted they had tortured some of the authors and the co-defendant to obtain confessions. The defence submitted an expert medical evaluation which it had not been possible to perform until three years after the alleged facts; the Court set it aside on the grounds that, according to the Libyan doctor officially appointed as an expert, the appropriate protocols had not been followed, traces of torture were undetectable and, in any event, the kinds of torture alleged would leave no mark after two or three weeks. The Tripoli Court acquitted the suspects for

⁹ See para. 2.5 above.

¹⁰ Kristyana Valcheva and Nasya Nenova.

¹¹ E/CN.4/2005/7/Add.1.

lack of evidence on 7 June 2005. The authors and co-defendant lodged an appeal, but the appeal was rejected by the Libyan Supreme Court on 29 June 2006. On 10 August 2007, the international press reported President Muammar Gaddafi's son, Seif Al-Islam, admitting in an interview with the Al Jazeera television channel that the authors and co-defendant had been tortured and threatened that their families would be harmed.¹²

The complaint

3.1 The authors claim that the State party violated articles 2; 6; 7; 9; 10, paragraph 1; 14 and 26 of the Covenant.

3.2 They claim that both the death sentence passed on 19 December 2006 and the Supreme Court ruling of 11 July 2007 upholding that judgement were the result of a flagrantly unfair, arbitrary trial. The death sentence violated article 6, paragraph 2, of the Covenant. An unfair trial, with numerous violations of article 14 of the Covenant, violates article 6, paragraph 2, of the Covenant. The fact that the death sentence was later commuted to life imprisonment does not relieve the State party of its obligation under this provision. The death sentence was commuted to life imprisonment only when a large sum of money was offered to the families of the infected children and heavy pressure had been brought to bear by the European Union, Bulgaria and other States.

3.3 The authors claim that they were tortured and drugged without their consent for the purpose of extracting confessions, in violation of article 7 of the Covenant. Despite corroborative evidence and overwhelming testimony from security officers acknowledging certain acts of torture, all the accused were acquitted, showing that the trial was a sham. The authors emphasize that the burden of proof cannot rest solely on them. They lodged their complaints as soon as they were able, on finally being brought before a judge after eight months of being held incommunicado. At that time they bore clear signs of torture, but no action was taken by the prosecutor or by the court. The authors contend that the severity of their ill-treatment was such that it must be characterized as torture, since it was used to extract confessions.

3.4 The authors claim that the treatment they endured throughout their detention also amounts to a violation of article 7. They recount that for 14 months after their arrest they were held in police facilities, not in a prison, and that for the first few days they were imprisoned with 20 other women in a small, dirty, windowless cell. Kristyana Valcheva was then held in solitary confinement in a windowless, barely lit and poorly ventilated cell measuring 1.8 metres by 1.5 metres that contained only a dirty mattress on which to sleep. There was no toilet in the cell and she was forced to relieve herself in an empty milk carton. The other authors were held in similar conditions. They were unable to take a shower for several months, they were given water only once every 24 hours and they had no access to books or magazines. Snezhana Dimitrova was forced to pray in Arabic, convert to Islam and renounce her Christian faith, removing her cross from around her neck, crushing it underfoot and spitting on it. The authors also allege that they were deprived of access to the open air, to physical exercise and to contact with the outside, including their families, and were denied the possibility of seeing a doctor in private.

3.5 The authors consider that their arrest and detention were arbitrary. Under Libyan law, they should have been brought before the prosecutor within 48 hours after their arrest. They were not, however, until three months later, on 16 May 1999. Even then, the authorities held them incommunicado until 30 November 1999, when their families were

¹² According to the interview record, Seif Al-Islam stated: "Yes, they were tortured by electricity and they were threatened that their family members would be targeted. But a lot of what the Palestinian doctor has claimed are merely lies".

finally allowed to see them. The State party thus violated article 9, paragraph 1. Moreover, the authors were reportedly not promptly informed of the charges against them. Only when they were brought before the prosecutor were they finally told, and even then without legal counsel present; this was a violation of article 9, paragraph 2. Finally, the authors were not brought promptly before a “judicial authority” since they made their first appearance in court on 7 February 2000. Before this date, they had only seen the prosecutor, and this is a violation of article 9, paragraph 3.

3.6 The authors contend that the treatment they endured following their arrest also constitutes a violation of their rights under article 10. They refer to their claims under article 7 of the Covenant and add that they were allowed to see their children and other family members only three or four times over a total of eight years in detention.

3.7 The authors contend that the State party violated their right to a fair trial because they were not informed of the charges against them for the first three months of their detention. They did not have access to an interpreter at any moment during the trial and were not assigned a lawyer to defend them until 17 February 2000, 10 days after the trial began and a full year after their arrest. They were forced to testify against themselves under torture, there was no lawyer in attendance when they made their confessions before the prosecutor and the court, without providing sufficient reasons, set aside Professor Montagnier’s and Dr. Collizi’s expert testimony despite every indication that their findings exonerated the authors and co-defendant. The second search of Ms. Valcheva’s home, during which the police “providentially”¹³ discovered five bottles of contaminated blood plasma, was conducted with neither the authors nor a defence lawyer present. The inconsistencies in this “discovery”,¹⁴ together with the fact that the prosecution never produced the search records and that the court itself mistook the findings of one search for those of the other, show that it was a complete fabrication. The authors also claim that the trial suffered unreasonable delays.¹⁵ These points constitute, according to the authors, a violation of article 14 of the Covenant.

3.8 By seeking to discriminate on the basis of race, skin colour, language, religion and nationality, the State party allegedly violated the rights of the authors that are protected by articles 6, 7, 9, 10 and 14 of the Covenant. The Libyan authorities unfairly arrested and convicted the authors in order to make scapegoats of foreigners. The authors were arrested, in violation of articles 2 and 26 of the Covenant, precisely because they were foreign and differed from the Libyan population in their race, skin colour, language, religion and national origins. They report a discriminatory policy of arresting foreign medical personnel which had been manifest on several occasions before their own arrests and sought to make scapegoats of foreigners. They point out that all the Libyans arrested in the case were freed almost immediately or released on bail, were not remanded in custody during the trial and were all eventually acquitted.

3.9 With regard to the exhaustion of domestic remedies, the authors note that their allegations were brought to the attention of the authorities: the allegations of torture, arbitrary arrest and unfair trial, as well as the complaints of discrimination on the grounds of nationality filed in 2006.

3.10 As redress for the violations suffered, the authors claim reparation, including financial compensation, for physical and moral injury. They also ask for the State party to

¹³ Placed in inverted commas by the authors in the initial submission.

¹⁴ The contents of the bottles were analysed in March 1999; the search of Ms. Valcheva’s home took place a month later.

¹⁵ Over eight years from the date of the arrest on 9 February 1999 until the final judgement of the Supreme Court dated 11 July 2007.

be urged to take steps to act on its obligations under the Covenant and the Optional Protocol, and to ensure that no similar violations occur in future.

State party's observations on admissibility and the merits

4.1 In a note dated 4 August 2009, the State party asked the Committee to declare the communication inadmissible without providing grounds for its request.

4.2 On 8 December 2009, the State party submitted its observations on the admissibility and merits of the communication. It points out that there had been lengthy legal and judicial proceedings to establish the truth in a case involving over 450 children whose fundamental right to life had been violated. It considers that the authors were afforded all the safeguards of a proper trial in conformity with international standards. Libyan civil society organizations, international human rights organizations and foreign diplomatic missions in Libya followed the proceedings throughout.

4.3 The State party recalls that, on 30 September 1998, a Libyan citizen, Mohammed Bashir Ben Ghazi, complained to the Department of Public Prosecutions that his son, then 14 months old, had become infected with HIV during a stay at Al-Fatah paediatric hospital in Benghazi. He had learned the news in Egypt, where his son had been transferred for medical treatment. On 12 October 1998, the Department of Public Prosecutions opened an investigation, having received more complaints. It took 233 statements from parents of infected children and, in addition to other measures, issued an injunction prohibiting all foreigners working at the hospital from leaving the country.

4.4 By decision No. 28/1209, the Secretary of the General People's Committee for Justice and Public Security ordered an investigation into the infection with HIV of children who had been treated at Al-Fatah paediatric hospital. The investigating committee consisted of the Director and senior investigating officers of the General Criminal Investigations Department and doctors. It began work on 9 December 1998 and eventually identified the authors, a Palestinian doctor and a Bulgarian doctor as suspects. The committee concluded its work on 15 May 1999 and sent a report with the evidence and names of the suspects to the General Prosecution Office, which interviewed the suspects.

4.5 On 18 May 1999, the General Prosecution Office referred the case to the People's Prosecution Office which continued the investigation. On 17 February 1999, the People's Court announced that it was not competent to deal with the matter and referred the case back to the General Prosecution Office. During the trial before the criminal court, the defendants alleged they had been tortured by police during the investigation. The judge of the Indictments Chamber ordered a representative of the General Prosecution Office to investigate the allegations. The findings of that investigation were reported to the Indictments Chamber, which referred the case to the Benghazi Appeals Court on 4 July 2003. That court devoted more than 20 sittings to hearing the case. On 6 May 2004, it sentenced the authors and co-defendant to death and ruled that it did not have territorial jurisdiction to take up the charges of torture against members of the investigating committee.

4.6 From 13 June 2002 onward, the General Prosecution Office took statements from the defendants about their claims of torture. It also took statements from the committee assigned to investigate the infection of children with HIV. The complaint of torture was referred to the Tripoli Appeals Court, which handed down a judgement on 7 June 2005 acquitting the investigating committee. The authors and co-defendant appealed the death sentence before the Supreme Court, which delivered its ruling on 25 December 2005, revoking the death sentence and sending the case back to the Benghazi Appeals Court for consideration by a different panel of judges. That court held 13 sittings on the case. On 19

December 2006, it again sentenced the authors and co-defendant to death. The defendants decided to appeal to the Supreme Court, which delivered its judgement on 11 July 2007.

4.7 The defendants received a fair trial in which they were afforded full legal safeguards. They were able to exercise their right to defence through a team of lawyers. The trial was held in open court and was attended by many representatives of civil society and human rights organizations, and by representatives of foreign diplomatic missions in Libya.

4.8 With regard to the allegations of torture, the State party notes that the authors appeared before the committee set up to investigate this case on 11 April 1999. The Palestinian doctor and two of the authors (Nasya Nenova and Kristyana Valcheva) confessed to being party to the crime with the other authors. They were then referred to the Office of the Prosecutor-General, where they were questioned by a member of the Department of Public Prosecutions. The Palestinian doctor and one of the authors, Nasya Nenova, made detailed confessions about their involvement in the crime together with the other Bulgarian nurses. They said nothing about being tortured by the investigating committee. They consistently admitted their involvement in the crime to all the different judicial authorities before which they appeared. Only after the People's Court declared itself not competent and the case was sent to the Indictments Chamber of the South Benghazi Court of First Instance, on 3 June 2002, did they tell the judge that they had been tortured. The judge immediately instructed the Department of Public Prosecutions to investigate the allegations. The Department of Public Prosecutions launched an investigation and took statements from the Palestinian doctor, the authors and the members of the investigating committee. It also ordered a medical investigation. Even though the Department was convinced that the allegations were groundless, it brought charges against the members of the investigating committee. The Court heard the case, and acquitted the members of the investigating committee on 7 June 2005.

4.9 The State party records that a total of 115 visits were paid to the convicts in prison by members of foreign organizations and foreign diplomatic missions. The Minister of Justice asked for members of the authors' families to be allowed to visit them every Sunday throughout their detention. A team of lawyers from Bulgaria was given permission to help with the defence of the accused.

4.10 With regard to the defence statement produced before the Supreme Court at the appeal against the judgement dated 19 December 2006, of the Benghazi Appeals Court, the State party points out that the Supreme Court answered all the objections raised by the authors.¹⁶

Authors' comments

5.1 In a reply dated 12 February 2010, the authors reiterate their arguments regarding the admissibility of the communication, including the exhaustion of domestic remedies and the substantiation of the allegations made. On the merits, they note that, in its observations, the State party only contests the arguments put forward in the initial communication and does not present any fresh arguments or evidence. The authors therefore refer the Committee to their initial submission.

¹⁶ In its judgement dated 11 July 2007, the Libyan Supreme Court upheld, count by count, the judgement dated 19 December 2006 of the Benghazi Appeals Court. It highlighted the contradictions between the various statements made by the defence over the course of the proceedings, which sometimes confirmed the confessions made during the interrogation phase and sometimes refuted them.

5.2 On the subject of discrimination, the State party argued that all the evidence pointed towards the authors' guilt. The authors claim they were discriminated against on account of their nationality because, on the contrary, there was no evidence of their guilt, particularly not at the time of their arrest. This is corroborated by the fact that, on 9 February 1999, the authors and 18 members of the international medical team, all Bulgarians working at different hospitals in Benghazi, were arrested by the Libyan police. Seven days later, 17 of them were released. The only evidence against the authors was obtained after their arrest and consisted of confessions obtained under duress and the "unexpected" discovery of five bottles of contaminated blood plasma at the home of one of them.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 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.

6.3 As regards the authors' claim that the death sentence was imposed after an unfair trial, in violation of article 6, the Committee notes that the death sentence was not upheld. In view of the commutation of the death sentences, there is no longer any factual basis for the authors' claim under article 6 of the Covenant. Accordingly, the Committee finds that this part of the claim has not been substantiated and is therefore inadmissible under article 2 of the Optional Protocol.¹⁷

6.4 The Committee notes that the State party asked the Committee to declare the communication inadmissible without providing grounds for its request. The Committee, however, finds that there is nothing that prevents the communication from being considered admissible under articles 2; 7; 9; 10, paragraph 1; 14 and 26 of the Covenant as the allegations have all been sufficiently substantiated.

6.5 The Committee therefore declares the communication to be admissible insofar as it raises issues under articles 2; 7; 9; 10, paragraph 1; 14 and 26 of the Covenant.

Consideration of the merits

7.1 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.

7.2 The Committee notes the authors' allegation that they were drugged and tortured to obtain confessions and that those allegations were corroborated during the trial by medical reports and testimony from witnesses including the police officers in charge of the investigation. It takes note of the authors' arguments that the burden of proof should not rest solely on them; that the complaints of torture were made as soon as possible, when the authors were at last brought before a judge after a year in detention; that at that time they

¹⁷ Communication No. 971/2001, *Arutyuniantz v. Uzbekistan*, Views adopted on 30 March 2005; communication No. 609/1995, *Williams v. Jamaica*, Views adopted on 4 November 1997; communication No. 1161/2003, *Kharkhal v. Belarus*, inadmissibility decision adopted on 31 October 2007; communication No. 1141/2002, *Gougnina v. Uzbekistan*, inadmissibility decision adopted on 1 April 2008.

bore clear signs of torture but no action was taken by the prosecutor or the court; and that the subsequent investigation cannot be considered either prompt or thorough.

7.3 The Committee takes note of the State party's arguments that some of the authors consistently admitted involvement in the crime to all the different judicial authorities before which they appeared;¹⁸ that it was not until 3 June 2002 that they told a judge they had been tortured; that the judge immediately instructed the General Prosecution Office to investigate the allegations of torture made by the authors and co-defendant, that the General Prosecution Office opened an investigation and took statements from the Palestinian doctor, the authors and members of the investigating committee; that the General Prosecution Office also ordered a medical investigation; and that, although it was convinced that the allegations were groundless, it brought charges against the members of the investigating committee. The Committee also takes note of the information from the State party that the court acquitted the committee members on 7 June 2005.

7.4 The Committee also notes that, for 14 months after their arrest, the authors were allegedly kept incommunicado in police facilities and not in a prison; that during the first few days they were held with 20 other women in a small, dirty, windowless cell; and that they were then kept in solitary confinement in degrading conditions that did not meet the minimum standards for the treatment of persons in detention. It notes the authors' further allegation under article 7 that one of them was forced to renounce her religion and adopt another. It notes that these allegations have not been refuted by the State party.

7.5 The Committee reaffirms its jurisprudence that the burden of proof cannot rest on the author of a communication alone, especially considering that the author and the State party do not always have equal access to the evidence and frequently the State party alone has the relevant information.¹⁹ It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to furnish to the Committee the information available to it. In cases where the author has submitted allegations to the State party that are corroborated by credible evidence and where further clarification depends on information that is solely in the hands of the State party, the Committee may consider those allegations substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party. The Committee also recalls its jurisprudence that the State party is duty-bound not only to conduct thorough investigations into alleged violations of human rights, including violations of the prohibition of torture, but also to prosecute, try and punish the culprits.²⁰ With regard to the incommunicado detention, the Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, which recommends that States parties should make provision against detention incommunicado.²¹

7.6 In the light of the above, the Committee concludes that the treatment inflicted on the authors constitutes torture and that the explanations provided by the State party, including

¹⁸ See para. 4.8 above.

¹⁹ Communication No. 1412/2005, *Butovenko v. Ukraine*, Views adopted on 19 July 2011, para. 7.3.

²⁰ Communication No. 1588/2007, *Benaziza v. Algeria*, Views adopted on 26 July 2010, para. 8.3; communication No. 1780/2008, *Zarzi v. Algeria*, Views adopted on 22 March 2011, para. 6.3; communication No. 1781/2008, *Djebrouni v. Algeria*, Views adopted on 31 October 2011, para. 7.4; and communication No. 1811/2008, *Chihoub v. Algeria*, Views adopted on 31 October 2011, para. 7.4.

²¹ *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40)*, annex VI, sect. A, para. 11.

the reference to the verdict of the Tripoli Appeals Court of 7 June 2005, are not such as to conclude that a prompt, thorough and impartial investigation was carried out despite the presentation of clear evidence of torture, such as that contained in the medical reports and the testimony of the alleged culprits. On the basis of the information available to it, the Committee concludes that the torture inflicted on the authors and the absence of a prompt, thorough and impartial investigation of the facts constitute a violation of article 7, alone and read in conjunction with article 2, paragraph 3, of the Covenant.

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

7.8 Concerning article 9, the Committee notes that in violation of Libyan law, the authors did not appear before the prosecutor until 16 May 1999, three months after their arrest, and that they were kept incommunicado until 30 November 1999, when their families were finally given permission to see them. The Committee notes the authors' allegations that they were not promptly informed of the charges against them; that it was not until they appeared before the prosecutor that they finally heard those charges, and then not in the presence of a lawyer; and that they were not brought promptly before a "judicial authority" as the first time they appeared in court was on 7 February 2000. The Committee notes that the State party has not refuted these allegations. In the absence of any pertinent explanations from the State party, the Committee finds a violation of article 9 of the Covenant.²²

7.9 The authors also allege a violation of article 14 of the Covenant. Here the Committee notes the following: the authors claim they were not informed of the charges against them during the first three months of their detention; they did not have access to an interpreter throughout the trial; they were not assigned a lawyer to defend them until 17 February 2000, 10 days after the trial began and a whole year after their arrest; they were forced, under torture, to testify against themselves; and there was no lawyer in attendance when they made their confessions before the prosecutor. In addition, the Committee notes that the Court, without providing sufficient grounds, dismissed the expert testimony of Professor Montagnier and Professor Collizi; that the second search of Ms. Valcheva's home, in which the police discovered five flasks of contaminated blood plasma, was allegedly carried out without either the authors or a defence lawyer present; and that the prosecution allegedly never produced the official reports of the searches. It further notes the authors' allegation that the trial was subject to excessive delays, in violation of article 14 of the Covenant. It also notes the State party's argument that the authors received a fair trial in which they were afforded full legal safeguards, that they were able to exercise their right to defence through a team of lawyers, and that the trial was held in open court and attended by many representatives of civil society, human rights organizations and foreign diplomatic missions in Libya.

7.10 The Committee reaffirms its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial in which it insists that, in general terms, the right to equality before courts and tribunals in addition to guaranteeing the principles mentioned in the second sentence of article 14, paragraph 1, also guarantees those of equal access and equality of arms and ensures that the parties to the proceedings in question are treated without any discrimination.²³ In the present case, taking into account the information provided by the State party, the Committee is therefore of the view that the State party is responsible for an accumulation of violations of the right to fair trial,

²² Communication No. 1761/2008, *Giri v. Nepal*, Views adopted on 24 March 2011, para. 7.8.

²³ *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI, para. 8.

particularly as regards the violation of the right not to testify against oneself, the violation of the principle of equality of arms, which was violated through the unequal access provided to evidence and expert opinions, and the defendants' right to have adequate time and facilities for the preparation of their defence, through the lack of access to a lawyer prior to the beginning of the trial. The Committee concludes that the trial and conviction of the authors constitute a violation of article 14 of the Covenant.

7.11 In the light of the foregoing conclusion, the Committee decides not to address the authors' allegations under articles 2 and 26 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 7, read alone and together with article 2, paragraph 3; and violations of articles 9 and 14 of the Covenant.

9. 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, including conducting, as an alternative to what has already been undertaken by the State party, a thorough, in-depth investigation of the allegations of torture and to prosecute those responsible for the treatment inflicted on 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.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, that State party has undertaken to ensure all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy 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. The State party is also requested to publish the present Views and to have them widely disseminated in the official language 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.]