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on civil and political  
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HUMAN RIGHTS COMMITTEE  
Ninety-first session  
15 October – 2 November 2007

**VIEWS**

**Communication No. 1422/2005**

<u>Submitted by:</u>	Mr. Edriss El Hassy (represented by the World Organisation Against Torture)
<u>Alleged victim:</u>	The author and his brother (Mr. Abu Bakar El Hassy)
<u>State Party:</u>	The Libyan Arab Jamahiriya
<u>Date of communication:</u>	29 July 2005 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 7 September 2005 (not issued in document form)
<u>Date of adoption of Views:</u>	24 October 2007

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\* Made public by decision of the Human Rights Committee.

*Subject matter:* unlawful arrest, incommunicado detention, ill-treatment, enforced disappearance

*Procedural issue:* State failure to cooperate

*Substantive issues:* right to life, prohibition of torture and cruel and inhuman treatment, right to liberty and security of the person, arbitrary arrest and detention, respect for the inherent dignity of the human person

*Articles of the Covenant:* article 2, paragraph 3; article 6, paragraph 1; article 7; article 9, paragraphs 1 to 5; and article 10, paragraph 1.

*Articles of the Optional Protocol:* article 5, paragraph 2(b)

On 24 October 2007, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1422/2005.

[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

Ninety-first session

concerning

**Communication No. 1422/2005\***

<u>Submitted by:</u>	Mr. Edriss El Hassy (represented by the World Organisation Against Torture)
<u>Alleged victim:</u>	The author and his brother (Mr. Abu Bakar El Hassy)
<u>State Party:</u>	The Libyan Arab Jamahiriya
<u>Date of communication:</u>	29 July 2005 (initial submission)

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

Meeting on 24 October 2007,

Having concluded its consideration of communication No. 1422/2005, submitted to the Human Rights Committee by Edriss El Hassy on behalf of his brother, Abu Bakar El Hassy, 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:

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

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

1. The author of the communication is Edriss El Hassy, a Libyan citizen, born in 1970 and currently residing in the United Kingdom. He is acting on his own behalf and on behalf of his brother, Abu Bakar El Hassy, also a Libyan national, born in 1967, who is said to have disappeared in Libya in 1995. The author claims to be a victim of a violation by Libyan Arab Jamahiriya of article 7, read in conjunction with article 2, paragraph 3, of the Covenant, and that his brother is a victim of a violation of article 2, paragraph 3; article 6, paragraph 1; article 7; article 9, paragraphs 1 to 5; and article 10, paragraph 1, of the Covenant. He is represented by the World Organisation Against Torture. The Covenant and its Optional Protocol entered into force for Libyan Arab Jamahiriya on 15 August 1970 and 16 August 1989 respectively.

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

2.1 The author is the younger brother of Abu Bakar El Hassy. The El Hassy family was a prominent family under the monarchy, which was later harassed by the current political regime. The father, a former mayor of Al-Bayda, was forced to resign after Colonel Gaddafi's military coup. After the father died in 1974, the author's brother became the family's main breadwinner. He was a successful businessman and was considered a respectable person in his community, serving as a mediator in private disputes and making donations to charitable organizations.

2.2 In the early 1990s, the author's brother was forbidden to leave his hometown by the Libyan internal security police. Between 1993 and 1995, he had to report regularly to the internal security police's offices, where he was questioned about his activities. On some occasions, he was forced to stay for two or three days at their offices to answer questions. No official charges were brought against him. In July 1993, the internal security police searched his house without a warrant and seized all his books and personal belongings. He was handcuffed, taken to Tripoli and held in detention for around two months. He was then released and returned to home. Again, he was never formally charged.

2.3 In early 1995, the author's brother was detained again, sent to Tripoli and held for one month. After his release, he had to report to the police every day. On or about 25 March 1995, a police unit came to his house to arrest him, placing a black bag over his head. His mother and some of his siblings witnessed the arrest. The same day, the author himself was also arrested in Benghazi while attending a lecture at the university.

2.4 The author's brother was taken to Abu Salim prison in Tripoli, where he was placed in the so-called "Military Unit". While waiting to be assigned a proper cell, he was placed in a toilet area adjacent to the author's cell. When a prison guard discovered that the two brothers could communicate through a hole in the wall, he severely beat the author's brother. According to witness accounts by other detainees who spoke to the author in March and April 1995, the author's brother was constantly interrogated and systematically beaten by prison officers. He started to have health problems as a result of this ill-treatment and poor detention conditions, including lack of adequate food and water and the damp, hot and unventilated cells. On or about 20 May 1995, he was released from Abu Salim prison. He returned home but was kept under tight surveillance and obliged to report every day to the internal security police.

2.5 On or about 24 August 1995, the author's brother was detained again and taken to Abu Salim prison, where he was placed in the "Central Unit" for about ten days and then transferred to the "Military Unit". The author explains that the "Military Unit" is reserved to members of the army serving prison sentences, although there were exceptions to this rule. Political dissidents were held in the Central Unit, where conditions of detention were considerably worse. On one occasion, the author's brother was brought by mistake to the author's cell and the author was able to confirm the extremely poor physical condition of his brother, due to the beatings and the poor prison conditions.

2.6 At the beginning of May 1996, the author's brother was transferred with some other 20 detainees back to the Central Unit. In June 1996, the poor detention conditions in the Central Unit (e.g. lack of proper food and water, constant beatings, overcrowding and heat) led to some sort of disturbance later described by the authorities as a "riot". The poor prison conditions that sparked the Abu Salim "riot" have been widely documented by major non-governmental organisations and by the Special Rapporteur on Torture.<sup>1</sup> After the "riot", the usual prison guards were replaced by a special military unit. At the end of June 1996, the special military forces stormed the Central Unit, killing large numbers of detainees. Over several days, the detainees in the other unit, including the author, could hear gunfire and screams of detainees being killed.

2.7 The author has not heard of or seen his brother since these events. The author himself was detained at Abu Salim for another four years until July 2000: presumably, had his brother survived, he would have met or heard about him again. Because he did not, the author has strong reasons to believe that his brother was killed in the massacre. However, the Libyan authorities have not given the author's family any information on the fate or whereabouts of the author's brother. Neither have they confirmed his death or returned his body for burial. Therefore, the author cannot be completely sure that his brother is dead, and continues to live with this excruciatingly painful uncertainty. Every attempt by the family to inquire about the fate of the author's brother has been unsuccessful. One of his brothers even went to Abu Salim prison to ask about him and was warned by prison officials never to make inquiries again.

### **The complaint**

3.1 The author claims that his brother is a victim of a violation of article 2, paragraph 3. He invokes General Comment No. 6, in which the Committee stated that "States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life".<sup>2</sup> He recalls that if the disappeared victim died in custody, it is incumbent on the State party to explain how the

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<sup>1</sup> In his Report of 12 January 1999 (E/CN.4/1999/61, para.448), the prison conditions are described as harsh, overcrowded and unsanitary. Available information indicated that the lack of adequate food medical care and the use of torture and other forms of ill-treatment had resulted in the deaths of political prisoners.

<sup>2</sup> See also Communication No. 107/1981, *Quinteros v. Uruguay*, Views adopted on 21 July 1983, para.16.

victim lost his life and inform the family of the location of the victim's body.<sup>3</sup> In the present case, the State party has taken no steps to investigate the disappearance of the author's brother and has provided no information to his family as to his whereabouts or fate for more than ten years. No public official has been prosecuted and no compensation was ever paid to the family. If the author's brother is dead, which is likely to be the case, the State party also breached its duty to inform the family of how he died or where his remains are located. The author thus argues that the facts of the case reveal a breach of the right to a remedy guaranteed under article 2, paragraph 3, of the Covenant.

3.2 The author argues that it may be presumed that his brother was arbitrarily deprived of his life in violation of article 6 of the Covenant. He submits that the killing of many prisoners at Abu Salim prison in 1996 was not reasonably necessary for protecting life or preventing escape. According to estimates, up to 250 detainees are still missing. The sheer number of prisoners killed during the incident suggests that the State party's actions were out of proportion to any legitimate law enforcement objective. The State party has attempted to avoid all accountability for the massacre by blocking all international and domestic scrutiny into what happened. This suggests a government cover-up.

3.3 The author claims that his brother is also a victim of violations of articles 7 and 10, paragraph 1. Firstly, his brother was detained several times incommunicado, including twice at Abu Salim prison, i.e. from around 25 March 1995 to 20 May 1995, then from 24 August 1995 to the present time. At no point during his detention was he given the opportunity to speak with a lawyer or his family, or anyone else in the outside world. He submits that his brother's repeated and prolonged incommunicado detentions of which the second one at Abu Salim prison has lasted ten years if he is still alive or around ten months if he was killed in 1996 amount to torture and cruel and inhuman treatment in violation of articles 7 and 10, paragraph 1.<sup>4</sup> Secondly, the author recalls that his brother was severely and systematically beaten during interrogation and once also for having attempted to communicate with his brother. The accounts given by eye-witnesses at the prison to the author, as well as the brother's subsequent physical deterioration witnessed by the author himself are consistent with what is known about the practices of torture and ill-treatment inside Abu Salim prison in the 1990s.<sup>5</sup> Thirdly, the author argues that his brother was held in life-threatening detention conditions, i.e. severe overcrowding, poor ventilation, insufficient and irregular food supply, lack of medical care and substandard hygienic conditions. He recalls that the Committee has consistently ruled that such conditions violate article 7.<sup>6</sup>

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<sup>3</sup> See Communication No. 886/1999, *Schedko v. Belarus*, Views adopted on 3 April 2003, para.12; and Communication No. 887/1999, *Staselovich v. Belarus*, Views adopted on 3 April 2003, para.11.

<sup>4</sup> See Communication No. 440/1990, *El-Megreisi v Libyan Arab Jamahiriya*, Views adopted on 23 March 1994, para.5.4.

<sup>5</sup> See Report by the Special Rapporteur on Torture, E/CN.4/1999/61, 12 January 1999, para.447.

<sup>6</sup> See Communication No. 414/1990, *Mika Miha v. Equatorial Guinea*, Views adopted on 8 July 1994, para.6.4; Communication No. 763/1997, *Pavlova v. Russian Federation*, Views adopted on 26 March 2002, para.9.1; Communication No. 798/1998, *Howell v. Jamaica*, Views adopted on

3.4 The author claims that his brother is a victim of violations of article 9. With regard to article 9, paragraph 1, his brother was arrested on several occasions without a warrant and held incommunicado for prolonged periods of time, without ever being charged or convicted of a crime or other offence. With regard to article 9, paragraph 2, he was never informed of the reasons for his multiple arrests and was never informed of the charges against him. With regard to article 9, paragraph 3, he was never brought before a judge. With regard to article 9, paragraph 4, the authorities made it impossible for him to challenge the legality of his detention by “disappearing him”. With regard to article 9, paragraph 5, the authorities made it impossible for him to seek compensation for his unlawful arrests and detentions.

3.5 With regard to the author himself, he claims to be victim of a violation of article 7, read in conjunction with article 2, paragraph 3, because of the anguish caused to him by his brother’s disappearance.<sup>7</sup> This anguish was exacerbated by the fact that he witnessed his brother’s physical and psychological deterioration in prison before his disappearance, knowing that he was being subjected to torture. Moreover, he was present in Abu Salim prison when special military forces stormed the unit where his brother was held and could hear the gunshots and screaming of the prisoners as they were being killed.

3.6 With regard to the issue of exhaustion of domestic remedies, the author recalls that since he was released from Abu Salim prison in July 2000, he was required to report regularly to the local police station, where he was routinely threatened with further detention, should he intend to file a complaint to the judiciary. He contends that there are no available remedies for human rights violations in Libya, because the judiciary is not independent from the government. Successful prosecutions of government officials for human rights violations are virtually non-existent and the regime has never accounted for the fate of disappeared persons or investigated or prosecuted officials responsible for such disappearances.<sup>8</sup> The author further contends that he was not in a position to appeal to the judicial system to investigate the fate of his missing brother because such a course of action would have exposed him and his family to a high risk of harm at the hands of government officials, especially considering that he had been held in detention for over five years and that his family and him have been threatened on several occasions by the internal security police. He makes several references to cases where relatives have been killed after making enquiries about their detained loved ones. He also recalls that one of his brothers went to Abu Salim prison to enquire about the missing brother and received threats as a result.

3.7 The author requests that the Committee recommend to the State party to fully investigate the circumstances of the disappearance of his brother and promptly communicate this information to the family, and to release him immediately if he is still detained at Abu Salim prison or to return his remains to his family if he is dead; to bring to justice those responsible for the disappearance, ill-treatment and death of his brother; to adopt measures necessary to ensure

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21 October 2003, para.6.2; and Communication No. 900/1999, *C. v. Australia*, Views adopted on 28 October 2002, para.8.4.

<sup>7</sup> See Communication No. 107/1981, *Quinteros v. Uruguay*, Views adopted on 21 July 1983, para.14.

<sup>8</sup> The author refers to the Committee’s latest Concluding Observations on Libya (CCPR/C/79/Add.101), as well as various NGO reports.

he and his family receive full compensation for the violations suffered; and to adopt necessary measures to ensure that similar violations do not occur in the future.

### **State party's failure to cooperate**

4. On 9 May 2006, 20 September 2006 and 28 November 2006, the State party was requested to submit information 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 with regard to the admissibility or substance of the author's claims. It recalls that under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have taken. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that these have been properly substantiated.

### **Issues and proceedings before the Committee**

#### **Consideration of admissibility**

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with article 93 of its Rules of procedure, decide whether or not it is admissible under the Optional Protocol of the Covenant.

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

5.3 With respect to the requirement of exhaustion of domestic remedies, the Committee reiterates its concern that in spite of three reminders addressed to the State party no information or observations on the admissibility or merits of the communication have been received from the State party. 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. The Committee finds no other reason to consider the communication inadmissible and thus proceeds to its consideration on the merits, in as much as the claims under article 6; article 7; article 9; article 10, paragraph 1; and article 2, paragraph 3, are concerned. It also notes that issues may arise under article 7, with respect to the disappearance of the author's brother.

#### **Consideration of merits**

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

6.2 As to the alleged detention incommunicado of the author's brother, the Committee recognises the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its General Comment No. 20 on article 7, which recommends that States parties should make provision against detention incommunicado. It notes that the author claims that his brother was detained incommunicado on several occasions, including twice at Abu Salim prison, from around 25 March 1995 to 20 May 1995, and then again from 24 August 1995 to the



present time. The Committee notes that the author was detained in the same prison and saw his brother there on several occasions, although he was not allowed to communicate with him. In these circumstances, and in the absence of any explanations from the State party in this respect, due weight must be given to the author's allegations. The Committee concludes that to keep the author's brother in captivity and to prevent him from communicating with his family and the outside world constitutes a violation of article 7 of the Covenant.<sup>9</sup>

6.3 As to the alleged beatings of the author's brother, the Committee notes that eye-witnesses at the prison informed the author that his brother was severely and systematically beaten during interrogation. Furthermore, the author himself witnessed the subsequent deterioration of his brother's poor physical condition. In these circumstances, and again in the absence of any explanations from the State party in this respect, due weight must be given to the author's allegations. The Committee concludes that the treatment of the author's brother at Abu Salim prison amounts to a violation of article 7.

6.4 As to the alleged conditions of detention at Abu Salim, the Committee takes note of the author's allegations that the conditions of detention in which his brother was kept were life-threatening. It reiterates that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated with humanity and respect for their dignity. In the absence of information from the State party on the conditions of detention at Abu Salim prison in which the author's brother stayed, the Committee finds a violation of article 10, paragraph 1.<sup>10</sup>

6.5 With regard to the alleged violation of article 9, the information before the Committee shows that the author's brother was arrested on several occasions by agents of the State party without a warrant and held incommunicado without ever being informed of the reasons for his arrests or the charges against him. The Committee recalls that the author's brother was never brought before a judge and never could challenge the legality of his detention. In the absence of any pertinent explanations from the State party, the Committee finds a violation of article 9.<sup>11</sup>

6.6 As to the alleged disappearance of the author's brother, the Committee recalls the definition of enforced disappearance in article 7, paragraph 2(i), of the Rome Statute of the International Criminal Court: "Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time." Any act leading to such disappearance constitutes a violation of many of the rights enshrined in the Covenant, including the right to liberty and security of person (art. 9), the right not to be subjected to torture or to

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<sup>9</sup>See Communication No. 540/1993, *Celis Laureano v. Peru*, Views adopted on 25 March 1996, para.8.5; and Communication No. 458/1991, *Mukong v. Cameroon*, Views adopted on 21 July 1994, para.9.4.

<sup>10</sup> See Communication No. 1134/2002, *Gorji-Dinka v. Cameroon*, Views adopted on 17 March 2005, para.5.2.

<sup>11</sup> See Communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para.8.5.

cruel, inhuman or degrading treatment or punishment (art. 7) and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (art. 10). It also violates or constitutes a grave threat to the right to life (art. 6).<sup>12</sup> In the present case, in view of his brother's disappearance since June 1996, the author invokes article 2, paragraph 3.

6.7 The Committee notes that the State party has provided no response to the author's allegations regarding the forced disappearance of his brother. It reaffirms that the burden of proof cannot rest on the author of the 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.<sup>13</sup> 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 allegations are corroborated by credible evidence submitted by the author and where further clarification depends on information exclusively in the hands of the State party, the Committee may consider an author's allegations substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party.

6.8 In the present case, counsel has informed the Committee that the author's brother disappeared in June 1996 at Abu Salim prison where he was last seen by the author himself and other detained, and that his family still does not know what has happened to him. In the absence of any comments by the State party on the author's brother's disappearance, the Committee considers that this disappearance constitutes a violation of article 7.

6.9 The author invokes article 2, paragraph 3, of the Covenant, which requires States parties to ensure that individuals have accessible, effective and enforceable remedies for asserting the rights enshrined in the Covenant. The Committee attaches importance to States parties' establishment of appropriate judicial and administrative mechanisms for addressing alleged violations of rights under domestic law. It refers to its General Comment No. 31 which states that failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.<sup>14</sup> In the present case, the information before it indicates that the author's brother did not have access to such effective remedies, and the Committee concludes that the facts before it reveal a violation of article 2, paragraph 3, read in conjunction with article 7.<sup>15</sup>

6.10 As to the possible violation of article 6 of the Covenant, the Committee notes that the author has not explicitly requested the Committee to conclude that his brother is dead. Moreover,

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<sup>12</sup> See Communication No. 950/2000, *Sarma v. Sri Lanka*, Views adopted on 16 July 2003, para.9.3.

<sup>13</sup> See Communication No. 139/1983, *Conteris v. Uruguay*, Views adopted on 17 July 1985, para.7.2; and Communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para.8.3.

<sup>14</sup> See para.15.

<sup>15</sup> See Communication No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para.9.9.

while invoking article 6, the author also asks for the release of his brother, indicating that he has not abandoned hope for his reappearance. The Committee considers that, in such circumstances, it is not for it to formulate a finding on article 6.

6.11 With regard to the author himself, the Committee notes the anguish and stress that the disappearance of the author's brother since June 1996 caused to the author. It therefore is of the opinion that the facts before it reveal a violation of article 7 of the Covenant with regard to the author himself.<sup>16</sup>

7. 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 reveal violations by the State party of article 2, paragraph 3, read in conjunction with article 7; article 7 standing alone; article 9, article 10, paragraph 1, of the Covenant with regard to the author's brother; and of article 7 of the Covenant with regard to the author himself.

8. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including a thorough and effective investigation into the disappearance and fate of the author's brother, his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for the author and his family for the violations suffered by the author's brother. The Committee considers the State party duty-bound to conduct thorough investigations into alleged violations of human rights, particularly enforced disappearances and acts of torture, and also to prosecute, try and punish those held responsible for such violations.<sup>17</sup> The State party is also under an obligation to take measures to prevent similar violations in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, 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 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.]

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<sup>16</sup> See Communication No. 107/1981, *Quinteros v. Uruguay*, Views adopted on 21 July 1983, para.14; and Communication No. 950/2000, *Sarma v. Sri Lanka*, Views adopted on 31 July 2003, para.9.5.

<sup>17</sup> See Communication No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para.11; and Communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para.10.