

Committee on the Elimination of Discrimination against Women

Magdulein Abaida

v

Libya

Individual Communication

**Submitted pursuant to Article 2 of the Optional Protocol to the
Convention on the Elimination of All Forms of Discrimination Against
Women**

8 March 2017

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I. Information concerning the Author of the Communication

A. The Author

Family name	Abaida
First Name	Magdulein
Date & Place of Birth	Tripoli, Libya
Nationality/Citizenship	Libyan
Passport/Identity card number if available	Libyan passport: 146782 UK residence permit: C00367345
Sex	Female
Marital status/children	Single, no children
Profession	Finance and administration assistance for international development company
Present address	London, UK
Mailing address for confidential correspondence on this communication	c/o The Redress Trust, Ground Floor, 87 Vauxhall Walk, London SE 11 5HJ, United Kingdom
Alleged victim	The Author

B. The Author's Representatives

Name of the representatives	The Redress Trust (REDRESS)
Occupation	International human rights non-governmental organisation
Mailing address for confidential correspondence on this communication	The Redress Trust, Ground Floor, 87 Vauxhall Walk, London SE 11 5HJ, United Kingdom
Fax/Telephone/Email	Fax: +44(0)20 7793 1719; Telephone: +44 (0)20 7793 1777; Email: juergen@redress.org

II. Information on the State party concerned

1. Ms Magdulein Abaida (the Author) files this communication against Libya (Libya or State party). The State party ratified the Convention on the Elimination of All Forms of Discrimination Against Women (the Convention) on 16 May 1989 and acceded to the Optional Protocol on 18 June 2004.

III. Summary

2. The Author was a women human rights defender in the State party and was subjected to gender based violence, including torture and ill-treatment, arbitrary arrest and detention, and breaches of her rights to freedom of expression and association. The State party's authorities discriminated against the Author on the basis of her sex and work as a women human rights defender. The State party intended to, and succeeded in, intimidating the Author into ceasing her women's human rights work in the State party, resulting in the Author ultimately fleeing the country. The Author submits that these actions by the State party represent breaches of Articles 1, 2(b), 2(d) and (e), Articles 3, 5(a) and 7(c) of the Convention.

IV. Statement of facts¹

3. The Author was born on 18 April 1987 in Libya. She has lived in the United Kingdom (UK) since September 2012 and was granted asylum by the UK on 1 November 2012.²
4. Prior to moving to the UK, the Author worked as a financial assistant and informal translator for journalists, companies and regional bodies in Tripoli, Libya. She also worked as a women human rights defender. On 31 May 2012, she registered her own organisation, Hakki organisation for women's rights, and collaborated on projects with Creative Associates International,³ Danish Church Aid (DCA) and other organisations for women's empowerment.
5. On 7 February 2012, a demonstration named "*Anger Day of Libyan Women*" took place in Tripoli. The Author was involved in the organisation of the demonstration, which had many purposes, including opposing the lack of minimum quotas for women at the forthcoming national election and Mustafa Abdul Jalil's comments in favour of men taking multiple wives.⁴ Mustafa Abdul Jalil was, at the time, chairman of the National Transitional Council (he held that position from 5 March 2011 until its dissolution on 8 August 2012).⁵
6. Following the demonstration, the names of the protest organisers were posted on the social networking website, Facebook, on Libyan 'pages,' and this included the name of the Author. In

¹ Unless otherwise stated, these facts are taken from Appendix 1, the Author's Witness Statement dated 9 October 2013.

² Magdulein Abaida, UK residence permit confirming refugee status, granted 1 November 2012, Appendix 5.

³ Creative Associates International is an international development organisation dedicated to supporting people around the world, see its website at <http://www.creativeassociatesinternational.com>.

⁴ Libyan Herald, 'Women's Day of Anger Planned for 7 February,' 3 February 2012; the article quotes the Author stating "In our society, people will not vote for women.... That's why we need the quota...We want laws against wife beating and sexual harassment of women...We also want children of Libyan women married to foreigners to have the right to Libyan nationality."

⁵ The National Transitional Council (NTC) was the de facto government of Libya for ten months between 2011 and 2012, see their website at <http://ntclibya.org/>.

response to this, the Author and others received messages on Facebook, such as that she was trying to destroy the Islamic way of life. Ismail al-Salabi, a commander of one of the most powerful militias in eastern Libya, the 17th February Brigade (see Section VI for a description of how the 17th February Brigade acted as an emanation of the Libyan state), published an article on his Facebook page in which he criticised the protestors as having forgone their culture at the expense of ‘French or British’ culture including in their demands. He expressed surprise that ‘none of the women were veiled or covered their hair’ which he claimed was not representative of Libyan society.⁶ The Author and some others were too frightened to leave their homes for a period of time subsequent to this Facebook post.⁷

7. In late February 2012, the Author was interviewed on a Libyan television channel, *Alharar*. She was asked to outline the reasons for the 7 February 2012 demonstration and to talk about women’s rights in Libya generally. In March 2012, the Author was interviewed by filmmakers about the situation of women in Tripoli and she helped the filmmakers to conduct additional interviews with women in Tripoli, Misrata and Zuwarah. On the way back to Tripoli, the Author, and the filmmakers she travelled with stopped to film landscape images. Men with guns approached them and asked them to stop filming in what they described as a controlled “security” area. They were told to wait for an interrogator to arrive from Tripoli and were prevented from leaving. Eventually, a male officer arrived, took their video footage and released them, telling them to leave and move on.
8. In June 2012, the Author was working as a translator for a European Union advisor. In this capacity, she met a Libyan Jewish representative by the name of Rafael. Rafael asked her to work as a translator for three journalists who would be arriving in Libya in July 2012 to film a documentary. The Author agreed.
9. In July 2012, the Author started to work as a translator for the journalists. The team included a lead journalist, a cameraman and a sound technician. At the time, the Author had understood the lead journalist, Emanuel Rozen, to be French. Later she was informed that he was Israeli. The other two members of the team identified themselves as British. The Author joined the team as a translator, and travelled with them to Benghazi, where they wished to film.

Arbitrary arrest and detention on 19 July 2012

10. On 19 July 2012, the Author was also interviewed for the documentary. She was asked to speak about her perception of the human rights situation in Libya. The interview took place at a restaurant, and the Author believes a man unknown to her and who was sitting nearby, with a camera phone was filming her. The Author approached the man at the time, but he denied having filmed her. Following the interviews, the team of journalists left the restaurant to film some landscape scenes. As this did not require a translator, the Author remained at the restaurant.

⁶ See Annex 6 to the Author’s Witness Statement, Letter from Amnesty International (United Kingdom Section) supporting the Author’s request for asylum in the United Kingdom, p.8.

⁷ Ibid, pp.7-8.

11. Later that same day, the Author received a call from one of the members of the team of journalists, Waleed, who told the Author that they had to leave Benghazi urgently. Soon after, the journalists arrived at the restaurant to collect the Author and they made their way to the airport.
12. On the way to the airport, armed guards stopped their car at what the Author describes in her statement as a makeshift checkpoint. The guards told the Author and her party that the car had to be checked for explosives. They were told to wait at the checkpoint. Eventually, a car arrived. The sign on the car said 'Al-Amen Al-Waqae' ("Defending Security"). A guard ordered them to follow this car. The car led them to a compound.
13. At this compound, guards searched the Author's belongings. They inspected her laptop, an Arabic version of the bible and a book called *Veiled and Unveiled* by a Syrian writer called Natheera Zein al-Din. They also found a picture of Mother Theresa holding the cross and a picture of an Islamic man with a beard superimposed on a Superman picture on her laptop. The Author's belongings were confiscated and the guards told her that all of these things made her suspicious. She was questioned about her relationship with Rafael and was asked if she preached Judaism.
14. The Author was released after an interrogation period of four to five hours. The authorities did not return any of her confiscated belongings. The next day (20 July 2012) the three journalists left the country and the Author returned to Tripoli. The Author was later informed that Rafael had been detained for ten days in Benghazi.
15. Upon returning to Tripoli, the Author filed a complaint about her arrest and detention with a lawyer at the Supreme Council for Human Rights and Freedoms who wrote a memorandum of the Author's complaint. However, the Author has not subsequently received any information from the Council about steps taken in regards to her complaint.
16. Further, upon returning to Tripoli, the Author learned that one of the three journalists was working with Israeli *Channel 10*. In addition, pictures of her (and other Libyans) with Rafael were published on social media, depicting them as traitors against Libya for working with Rafael. She received threats, including comments that she, and others in the photographs, should be executed. The threats were made predominantly on Facebook.

Unlawful arrest, arbitrary detention, torture and/or ill-treatment from 9 August - 13 August 2012

17. The Author returned to Benghazi on 7 August 2012 for a workshop with Danish Church Aid (DCA) on women's rights in the constitution.

i. Arrest on 9 August 2012

18. On 9 August 2012, at approximately 12pm, between seven and ten armed men entered the room where the workshop took place. The men took three attendees of the workshop, two members of DCA staff and a woman from the USA. Everyone else, including the Author, was told that they could return to their hotel rooms.

19. The Author saw a further thirty men with Kalashnikovs outside the building. Some were in uniform and others were not. She saw cars with the stamp of the 17th February brigade on it.⁸
20. At approximately 1-2pm on the same day, five members of the 17th February brigade entered the Author's hotel (Esthbelia), and took her with them. Before leaving, the Author was able to send a text message to a friend. Following this, human rights organisations and media published information about the Author's arrest.⁹

ii. Detention 9 August – 10 August 2012

21. The members of the 17th February brigade took the Author to a compound where she met the three individuals that had earlier been taken from the workshop. Two of them were released shortly after. The Author was kept in detention and an individual from DCA chose to remain with the Author.
22. As she entered the compound, the Author noticed that a sign on the gate had the mark of the 17th February brigade. The Author was taken to an office where guards questioned her about her relationship with Rafael. They told her it was forbidden (*haram*) for a woman to travel on her own without a male accompanying her. She was also questioned about one of her colleagues from Hakki called Hiba. The Author learned later that Hiba had been detained and questioned as well.
23. Later that day, a male named Ahmed Syed introduced himself to the Author. Ahmed Syed showed the Author his identification which showed that he was an official from the Defence Ministry. The Author and Hiba were then transferred to a Defence Ministry compound. At this point, the individual from the DCA left. At the Defence Ministry compound, a man called Bobaker Falak and a woman called Noha continued questioning the Author. She was asked what she would write concerning her abduction from the hotel room and why she had written publicly about her previous experiences of detention.
24. On 10 August 2012 in the early hours of the morning, the Author was released and returned to her hotel where she arrived at around 3am. Later that day, the other workshop participants left Benghazi, while the Author and Hiba went to the Defence Ministry compound, at approximately 9pm, to collect their belongings which had been taken from them earlier, including their passports. While there, a man who had interrogated them told the Author that she should have been executed (due to her perceived close relations with Jews) and that she was lucky to be alive. The Author and Hiba signed some papers and collected their belongings.

iii. Detention 11 August – 12 August 2012 (Torture)

25. The next day, 11 August 2012, at approximately 8am the Author and Hiba left for the airport to fly back to Tripoli. On their journey to the airport, members of the 17th February brigade arrested and detained them. The Author and Hiba were taken to a small compound that they did not recognise. They saw two cars with "Supreme Security Committee" (SSC) written on them. The Author was then separated from Hiba.

⁸ See Section VI below for how the 17th February brigade was an emanation of the State at the time

⁹ See the following annexures to the Author's Witness Statement: Annex 2, Annex 3a and Annex 3b.

26. The Author heard her phone ring and presumed it was her mother calling. The officers present told the Author not to answer the phone, which caused the Author much distress. In response, a male guard said that she could speak to her mother if she told her that her flight had been delayed, which the Author did. The Author sat on a floor for some time, waiting. She was offered water she believes as a way of demarcating her from practising Muslims who were observing Ramadan at the time. The Author refused the water.
27. The Author fell asleep but woke to the sound of raised voices. A newly arrived officer was shouting and started kicking the Author all over her body. He called her a bitch and whore. He said that she was Israeli and that she had relations with a Jew so she was an Israeli spy. He took out his gun and threatened to kill the Author. He said something like "I can kill you right now and bury you here and no one will know." He hit her with his gun on her left cheek and left shoulder and continued kicking her with his feet. The Author says it felt as though the beating lasted approximately half an hour, before this guard left the room.
28. Later the Author was led to an office within the compound. She could hardly move because of the beatings. In the office five or six men were waiting. The Author identified two of them, Sheik Salem and someone called Bangla, as members of the 17th February brigade.
29. The male officer who had beaten the Author also entered the room, shouted at her and grabbed her by her hair. Another man called Salah Esarkasi entered the room, introduced himself as an investigator with the SSC and sat beside her and asked her about Rafael and her relationship with him. He accused the Author's organisation, Hakki, of being a prostitute organisation that supported Israel.
30. The man who had beaten the Author suggested that she was a very well trained Israeli spy. He seemed to base this accusation on her confidence as a woman in returning to Benghazi after having been detained there once before already. The man said that this indicated that she was strong, unlike most Libyan women, so she must have received some official training.
31. The questioning went on until approximately 4am on 12 August 2012. The Author was released on the condition that she would return at 12pm the same day. The Author returned to her hotel.

iv. Questioning on 12 August 2012

32. Members of the 17th February brigade and a member of the SSC collected the Author from her hotel on 12 August 2012 at 12pm. She was brought to the small compound where she had already been detained the previous day and where she had seen two cars of the SSC.
33. Salah Esarkasi told the Author that he had spoken with the Deputy of the Interior Ministry about her case. Their view was that the Author had inadvertently been working for Israel. Salah Esarkasi said that if the Author told them everything she knew then she would be released. Salah Esarkasi also asked the Author about a trip that she had taken to Lebanon. He asked whether she had met Rafael there. The Author said that she had visited Lebanon for a holiday. She has friends in Lebanon and did

not know Rafael at the time of her visit to Lebanon. Similar allegations to those made the day before were repeated.

34. The Author was again released and told to return at 12pm on 13 August 2012.

v. Questioning on 13 August 2012

35. The Author returned to the small compound at 12pm on 13 August 2012 where a guard told her to sign a letter and to meet Wanees Asharif, who was Deputy at the Interior Ministry at that time.

36. Wanees Asharif complained to the Author about the “noise” she had created in the media and asked the Author what women’s rights she wanted. The Author said laws that would try to deal with street harassment would be a good start. Asharif laughed in response. He then said that she had to write a letter that she will not deal with Jewish organisations or people. On the paper that she was given, she wrote that she would put all her skills and energy for her country.

37. Wanees Asharif then let her go although he made it clear that the Author could be questioned anywhere, including once she had returned to Tripoli. Her laptop, which had been taken from her earlier, was not returned to her.

38. The Author left Benghazi for Tripoli the next day, on 14 August 2012.

vi. Harassment in the aftermath of the incidents

39. Upon returning to Tripoli, the Author could not return to her NGO work. She received hate-mail, including letters from members of the public threatening to kill her if she was seen in public. The Author terminated all her project contracts.

40. Between 15 and 17 August 2012, a man who identified himself as Ahmed Najar of the 17th February brigade telephoned the Author. The Author identified him as the male referred to as Bangla in the second compound, where she was beaten. Ahmed Najar said it was the first time that he had seen a strong Libyan woman. The Author felt unable to reject his call or express discomfort at their interaction. She feared that if she did, she would suffer reprisals.

41. Salah Esarkasi also contacted the Author upon her return to Tripoli. He requested the Author to work with his agency, the SSC and to report on NGOs and embassies and to undertake a project in relation to national reconciliation matters. Between 15 and 17 August 2012, Salah Esarkasi contacted the Author through Facebook, using the name “Esam Mahde”. Fearing that she would suffer repercussions if she rejected it, the Author accepted “Esam Mahde’s” Facebook friendship request and also sent him her e-mail address when he requested it.

42. On 31 August 2012, Salah Esarkasi sent her an e-mail and asked the Author to confirm a start date for working with the SCC. Again, fearing for her safety, she did not refuse the offer but instead explained that she was not feeling confident and expressed concern. She hoped that by not declining the offer outright, she would not suffer reprisals, and have a greater chance of obtaining a visa to travel.

43. The Author then fled Libya in September 2012. Upon reaching Tunisia, she deleted “Esam Mahde” from her Facebook account. On 26 September 2012, she received an e-mail from him. He asked why she had blocked him and deleted him as a friend on Facebook. She did not respond.
44. The Author still fears the Libyan government, the SSC and the Interior Ministry, but also citizens who have been led to believe she is an Israeli spy. She feels that her image was destroyed after she was portrayed in the media as working for a Jewish organisation.¹⁰ She believes that if she returns to Libya she will be killed for her views, and writing.
45. The Author was granted refugee status in the UK on 1 November 2012.

vii. Pursuit of domestic remedies

46. Following her return to Tripoli on 14 August 2012, the Author was unable to file a complaint related to the unlawful arrest, arbitrary detention, torture and ill-treatment she was subjected to from 9 to 13 August 2012 as she feared being again arrested, detained and tortured. The Author’s risk of further persecution in Libya were confirmed by Amnesty International in October 2012:

Since the Applicant’s [the Author’s] identity has been publicly revealed as an outspoken human rights activist calling for the promotion of women’s rights deemed as contradicting Islamic Shari’a and Libyan social norms, coupled with public allegations of her relationship with Jews and Israeli nationals, she finds herself at real risk of human rights abuses capable of amounting to persecution should she return to Libya at this time. These real risks arise on account of her specific profile, including as a result of her prior history, her human rights activism and her political and religious opinions. ...[T]hreats of violence received by other women’s rights activists, sharing the Applicant’s ideology, further demonstrate the likely consequences on her return to her country of origin.¹¹

47. These fears led to her fleeing Libya and seeking and obtaining refugee status in the UK. Once given refugee status in the UK, the Author in 2013 contacted REDRESS, and REDRESS, on behalf of the Author, filed a complaint, together with a supporting witness statement and documentation, with the Libyan Prosecutor General.¹² The complaint set out in detail her allegations of arbitrary detention, torture and ill-treatment and called for the Prosecutor to investigate those allegations, as required by both Libyan law and Libya’s international human rights obligations.¹³ The complaint was filed in person at the Prosecutor General’s office in Tripoli by a relative of the Author on 21 October 2013, who obtained a receipt from the Prosecutor General’s Office.¹⁴ The Author has received no further communication from the Prosecutor General’s office and it does not appear that any investigation has been started by the Prosecutor General or any other official body. The Author found out through contacts in Tripoli in August 2014 that her complaint was forwarded to the

¹⁰ See e.g. Annex 4 of Author’s Witness Statement: Copy of article referring to the Ministry of Interior’s response to the Author’s abduction, which accuses her of “dealing with a Jewish organisation.”

¹¹ Annex 6 to the Author’s Witness Statement, p.14.

¹² Appendix 2, Complaint to Libyan Prosecutor General, dated 10 October 2013.

¹³ Ibid, p. 2.

¹⁴ Appendix 3, Receipt from Libyan Prosecutor General’s office dated 21 October 2013.

general attorney in Benghazi, Ms. Najat Al Arebi, but the Author has received no communication from her and has no further information.

48. A friend of the Author's attempted to file a follow-up letter on behalf of the Author on 4 November 2014 at the prosecutor's office in Tripoli. However, the Author's friend informed the Author that the prosecutor's office refused to accept the letter.

V. Admissibility

49. It is submitted that this Communication meets the admissibility criteria established under the Optional Protocol to the Convention.¹⁵

50. The Author is an individual under Article 2 of the Optional Protocol, and the violations alleged in this complaint occurred after the entry into force of the Optional Protocol for the State party.

V.1. Exhaustion of domestic remedies – Article 4(1) of the Optional Protocol

51. Article 4(1) of the Optional Protocol requires Applicants to this Committee to exhaust domestic remedies before submitting a complaint to the Committee unless, within the terms of Article 4(1), the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

52. The Author has raised the substance of her complaint in October 2013 before the Libyan Prosecutor General as set out in Section 4 above.¹⁶ In particular, the Author explicitly complained to the Libyan prosecutor of discrimination against her because of her sex.¹⁷

53. The Author submits that under the terms of Article 4(1) of the Protocol, any domestic remedies in the State party are unreasonably prolonged and/or unlikely to bring effective relief.

(i) Any domestic remedies are unreasonably prolonged

54. The Author's complaint to the Libyan Prosecutor was filed on 21 October 2013. The Author has had no response to date, despite several attempts to follow up with the Prosecutor's office. This means that there has now been a delay of more than three years by the State party's authorities to act upon the Author's complaint. In the case of *NT v Hungary*, this Committee held that

a delay of over three years [in criminal proceedings] from the dates of the incidents in question would amount to an unreasonably prolonged delay within the meaning of article 4, paragraph 1, of the Optional Protocol.¹⁸

55. In the present case, there is no indication that the authorities have initiated an investigation into the Author's complaint. In any event, the Author submits that such an investigation would now be unreasonably prolonged.

¹⁵ UN General Assembly, Optional Protocol on the Elimination of All forms of Discrimination Against Women, 6 October 1999, Treaty Series, vol. 2131, No. 20378.

¹⁶ Appendix 2, Complaint to Libyan Prosecutor General, dated 10 October 2013.

¹⁷ Ibid, para 55.

¹⁸ CEDAW, *A.T. v. Hungary*, A/60/38, 26 January 2005, para. 8.1.

(ii) Domestic remedies are unavailable and unlikely to bring effective relief

56. For violations such as those alleged in the present case, including torture and ill-treatment, an effective remedy requires a criminal investigation, prosecution, punishment and other forms of reparation.¹⁹ As set out by the Human Rights Committee, the duty to investigate and to criminally prosecute, try and punish those deemed responsible for violations of human rights ‘applies *a fortiori* in cases in which the perpetrators of such violations have been identified.’²⁰ In the present case, the Author submitted a detailed complaint to the Libyan Prosecutor General in October 2013, identifying several individuals alleged to be responsible by name, as well as dates and places of detention. The Author thus provided the Prosecutor with ample information to conduct an investigation with a view to investigate and prosecute those responsible. In cases where the State fails to initiate, and then to move the investigation and prosecution forward, a complainant cannot be expected to exhaust domestic remedies. According to the African Commission on Human and Peoples’ Rights (ACHPR or African Commission):

Whenever there is a crime that can be investigated and prosecuted by the State on its own initiative, the State has the obligation to move the criminal process forward to its ultimate conclusion. In such cases, one cannot demand that the Complainants, or the victims or their family members assume the task of exhausting domestic remedies when it is up to the State to investigate the facts and bring the accused persons to court in accordance with both domestic and international fair trial standards.²¹

57. Despite having received the Author’s complaint in October 2013, the Libyan Prosecutor General has not initiated an investigation into the crimes suffered by the Author.

58. The prosecutor’s failure to respond to the Author’s complaint and to initiate an investigation is synonymous with the breakdown of the rule of law in the State party due to the on-going conflict. The Author submits that there is effectively no functioning justice system and therefore no remedy available to the Author. This has been the case since the time of the violations suffered by the Author and continues to be the case to this day. An Amnesty International report from 2012 stated that Libya’s judicial system:

simply cannot cope with the volume of cases and is failing to provide justice and redress. It also suffers from the legacy of being a tool of repression under al-Gaddafi’s rule, where a parallel judicial system was designed for “political cases.” Even when victims and relatives of those extrajudicially executed or tortured to death have lodged complaints, few meaningful investigations have been initiated, perpetuating a climate of impunity and facilitating the repetition of violations.²²

59. NGO submissions for Libya’s Universal Periodic Review in 2015 indicate that the justice system remained dysfunctional three years later. Human Rights Watch reported in this context in 2014 that:

¹⁹ Human Rights Committee, General Comment No. 31, The Nature of the General Obligation Imposed on States Parties to the Covenant, 29 March 2004, paras. 15 – 18.

²⁰ Human Rights Committee, *Vicente et al v. Colombia*, Communication No.612/1995, 14 June 1994, para 8.8.

²¹ African Commission on Human and Peoples’ Rights (ACHPR), *Article 19 v. The State of Eritrea*, Communication No. 275/2003, 30 May 2007, para 72.

²² Amnesty International, *Libya: Rule of Law or Rule of Militias*, July 2012, p.9, at http://www.amnestyusa.org/sites/default/files/2012_-_007_-_rule_of_law_or_militias_formatted.pdf.

Libya's criminal justice system remains weak and riddled with deficiencies that the government has yet to overcome, and is ineffective.²³

It further reported that:

The justice system remains dysfunctional and under threat. Attacks on judges, prosecutors and witnesses have led to the enforced closure of courts and prosecutors' offices in Benghazi, Derna, Sirte and Sebha, and the Justice Ministry in Tripoli was forced to close due to the fighting between rival militia alliances that broke out in July 2014.²⁴

60. There is therefore no effective remedy for the Author to exhaust. This is furthermore demonstrated by the failure of the authorities to investigate the complaint submitted by the Author.

VI. Responsibility of the State party

61. The Author submits that the State party is responsible for the alleged violations both because the State itself (the Ministry of the Interior) was involved in and responsible for the violations of the Author's rights²⁵ and because the acts and omissions of the 17th February Brigade and the SSC can be attributed to the State party. Both, the 17th February Brigade and the SSC, at the relevant time acted as an extension of and at the behest of the State party and performed State functions.

62. The 17th February brigade has been described by Amnesty International as "one of the most powerful armed militias in eastern Libya."²⁶ It is linked to the State, carrying out a number of State functions, including guarding the US consulate in Benghazi, as this summary of its genesis describes:

The genesis of the February 17 Brigade, which was officially providing the consulate day-to-day "primary" security, goes back to last year's Libyan civil war. When the war ended, this group of volunteer militiamen, like many others, held onto their guns and provided basic state functions for a country still recovering from not just civil war but decades of Moammar Gaddafi's careful dismantling of any civil society or agency powerful enough to even hint at challenging him. Those militia functions have centered on security, including for the U.S. consulate in Benghazi, where traditional police or military forces are still not strong enough to fill the role on their own.²⁷

63. The SSC "was formed in Tripoli in the immediate aftermath of the fall of Tripoli [and] continues to serve as an auxiliary police and intelligence service."²⁸ The Carnegie Endowment for International Peace sets out how "[t]he large majority of the armed groups have been incorporated into two umbrella coalitions, the Supreme Security Committees (SSC) and the Libya Shield (which were

²³ Human Rights Watch, 'Libya: UPR Submission' 16 September 2014, para 26, at <https://www.hrw.org/news/2014/09/16/libya-upr-submission-september-2014>.

²⁴ Ibid, para 29.

²⁵ See Author's Witness Statement, paras. 48 – 52 and Annex 4 to the Author's Witness Statement, Copy of article referring to the Ministry of Interior's public statement on abduction both of which show the Libyan Minister of Defence's knowledge of and involvement in the violations.

²⁶ See Annex 6 to the Author's Witness Statement, p.8

²⁷ Max Fisher, Libyan Militia's failed security at Benghazi, Washington Post, 2 November 2012, at <https://www.washingtonpost.com/news/worldviews/wp/2012/11/02/libyan-militias-failed-security-at-benghazi>; see also Francesco Finucci, Libya: military actors and militias, p.9, at http://www.globalsecurity.org/military/library/report/2013/libyan-militias_finucci.pdf.

²⁸ Annex 6 to the Author's Witness Statement, p.10.

established as transitional gendarmeries), that are nominally paid for and under the authority of the Interior Ministry and the chief of staff, respectively.”²⁹ This is confirmed by Human Rights Watch, which explains how the National Transitional Council “created various hybrid forces to ‘support’ the police (such as the Supreme Security Committee).”³⁰

64. The Author submits that therefore the State party is responsible for the violations committed against her.

VII. Violations of the Convention

65. The Author submits that the State party is responsible for violations of Articles 1, 2(d), 2(e), 3, 5(a), 7(c) and 2(b) of the Convention.

VII.1. Violation of Article 1

66. The Author submits that she was, within the terms of Article 1 of the Convention, the victim of discriminatory treatment inflicted on her by the State party on the basis of her sex. That treatment had the purpose and effect of impairing her exercise of her human rights and fundamental freedoms. Article 1 links the definition of discrimination to the enjoyment by women “of human rights, fundamental freedoms in the political, economic, social, cultural, civil or any other field.” Thus the obligation on States to eliminate discrimination applies not only in the fields explicitly covered by the Convention, but also in relation to a much broader range of human rights and fundamental freedoms recognised under other treaties and customary international law.³¹ In the present case, this includes the right not to be subject to torture and ill-treatment,³² the right to liberty and security of person³³ and the rights to freedom of expression and association³⁴ each of which will be examined in turn.

VII.1.1. Torture

67. For treatment to constitute torture in accordance with Article 1 of UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), the pain and suffering of the victim must reach a certain level of severity, be intentionally inflicted for purposes such as obtaining information or a confession, punishment, intimidation/coercion or for any reason based on discrimination of any kind and by or at the instigation of or with the consent or acquiescence of the State.³⁵ The Committee against Torture has previously indicated that the assessment of whether particular treatment amounts to torture “depends on all circumstances of the case, such as the duration and manner of the treatment, its physical or mental effects as well as the sex, age and state

²⁹ Frederick Wehrey, Peter Cole, Building Libya’s Security Sector, Carnegie Endowment for International Peace, 6 August 2013, at <http://carnegieendowment.org/2013/08/06/building-libya-s-security-sector>.

³⁰ Human Rights Watch, Militias and the Quest for Libyan Unity, 27 October 2015, at <https://www.hrw.org/news/2015/10/27/militias-and-guest-libyan-unity>.

³¹ Marsha A. Freeman, Christine Chinkin and Beate Rudolf (eds), The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary (Oxford: Oxford University Press 2012) (hereinafter referred to as the CEDAW Commentary), p.62.

³² See, *inter alia*, Article 5 of the Universal Declaration of Human Rights (UDHR); Article 7 of the International Covenant on Civil and Political Rights (ICCPR); Article 5 of the African Charter on Human and Peoples’ Rights (African Charter).

³³ See, *inter alia*, Article 9 of the UDHR, Articles 9 and 10 of the ICCPR; Article 6 African Charter;

³⁴ See, *inter alia*, Articles 19 and 20 UDHR; Articles 19 and 22 ICCPR; Articles 9 and 10 African Charter.

³⁵ Article 1, UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

of health of the victim.”³⁶ The Human Rights Committee considered that verbal abuse, kicking and beating of detainees and threats of further violence can constitute a violation of the prohibition of torture under Article 7 of the ICCPR.³⁷ The UN Special Rapporteur on Torture has found that: “the fear of physical torture may itself constitute mental torture,”³⁸ and that “serious and credible threats, including death threats, to the physical integrity of the victim or a third person can amount to cruel, inhuman or degrading treatment or even to torture, especially when the victim remains in the hands of law enforcement officials.”³⁹

68. In the present case, a member of the SCC subjected the Author to severe pain and suffering while in detention from 11 to 12 August 2012. The treatment included: (i) verbal abuse (in particular that of a gendered and sexual nature, i.e. being called a “bitch” and “whore”); (ii) prolonged kicking all over her body with his feet; (iii) being struck with a gun on her cheek and shoulder; and (iv) being subjected to a death threat with a gun.⁴⁰

69. The Author’s treatment caused her severe physical pain and immediately afterwards she went into a state of shock; she kept thinking this was not real and that she might wake up.⁴¹ Following the treatment, which lasted for approximately half an hour, the Author found it difficult to walk due to the pain. The physical results of the ill-treatment suffered by the Author are evidenced by the photos taken after the events described, showing extensive bruising to the Author’s face and shoulder.⁴² As well as the physical pain suffered by the Author at the time and from her injuries in the immediate aftermath, the treatment has ongoing and serious psychological repercussions. She has been diagnosed by Dr Mary Robertson, a chartered and consultant clinical psychologist with an expertise in traumatic stress, as suffering from severe post-traumatic stress disorder. Dr Robertson finds that: “Ms Abaida’s condition is consistent with the narrative she gave of her experiences of kidnap and torture. It is also consistent with her witness statement.”⁴³ Dr Robertson also finds that the treatment continues to have “a significant and detrimental impact on her day to day functioning.”⁴⁴

70. The Author submits that her treatment caused and continues to cause her severe pain and suffering.

71. The treatment was intentionally inflicted and for several underlying purposes: the authorities sought to punish the Author for her prominent women’s rights work and to intimidate her into ceasing such work. This is evidenced by the fact that the State party’s authorities arrested the Author during the course of a Danish Church Association workshop where she was discussing women’s rights in the constitution.⁴⁵ Further, during the questioning which took place immediately subsequent to the Author’s torture and ill-treatment, the Author was questioned about her women’s rights

³⁶ See e.g., Human Rights Committee, *Antti Vuolanne v Finland*, Communication No. 265/1987, 7 April 1989, para 9.2.

³⁷ See e.g. Human Rights Committee, *M.T. (represented by The Redress Trust and the FIDH) v Uzbekistan*, Communication 2234/2013, 1 October 2015, paras.7.3-7.4.

³⁸ UN Special Rapporteur on Torture, Question of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc A/56/156, 3 July 2001, para.7.

³⁹ *Ibid*, para.8.

⁴⁰ All actions referred to in the Author’s Witness statement, Appendix 1, para 37.

⁴¹ Appendix 4, Dr Mary Robertson, Medico-Legal Report, 10 October 2013, para 9.22.

⁴² Annex 7 to the Author’s Witness Statement, entitled: Photos taken of me after the abuse I experienced on 11 August 2012.

⁴³ Appendix 4, para 20.1

⁴⁴ Appendix 4, paras 19.1 – 19.5

⁴⁵ Author’s Witness Statement, para 20.

organisation Hakki, which the interrogator accused of being a “prostitution organisation.”⁴⁶ The purpose of the Author’s treatment was also discriminatory in that she was targeted as a woman and as a women’s human rights defender and in order to discourage her, as a politically active woman, from breaking gendered cultural norms (see further on the discriminatory aspects of her treatment at Section VII.1.6 below).

72. The treatment was inflicted by or at the instigation of or with the consent or acquiescence of the State, as the actions were carried out by members of the SCC who acted in an official capacity (see Section VI above on the responsibility of the State party). Indeed, the evidence presented in Section VI is further bolstered by the fact that the officer present during the ill-treatment, Mr. Salah Esarkasi, told the Author that he had spoken with the Deputy of the Interior Ministry about her case. Further, the following day, when the Author returned to the same compound as she was told to do, she met Deputy of the Interior Ministry, Wanees Asharif, in person. Her wounds from the treatment were clearly visible to Wanees Asharif, yet he did not inquire about what happened. In addition, Wanees Asharif spoke publicly about the Author’s detention on 11 – 12 August 2012, stating that she had been arrested by “a legitimate force affiliated to the Ministry of Internal Affairs.”⁴⁷

73. In light of the foregoing, the Author submits that she was subjected to treatment amounting to torture.

VII.1.2. Arbitrary arrest and detention

74. The Author submits that the authorities arbitrarily arrested and unlawfully detained her on three separate occasions, namely on 19 July 2012,⁴⁸ on 9 August 2012⁴⁹ and on 11-12 August 2012.⁵⁰

75. International human rights law prohibits arbitrary arrest and unlawful detention and no one should be deprived of her liberty except on such grounds and in accordance with such procedures as are established by law. It follows from this provision that any deprivation of physical liberty, in particular, any arrest or detention, must be lawful, that is, based “on such grounds... as are established by law”, and must be effected in accordance with due process of law, that is, “in accordance with such procedure as established by law”.⁵¹ Remand in custody must not only be lawful (it is a condition sine qua non) but also reasonable and necessary in the circumstances.⁵² International standards as enshrined for instance in the African Commission’s Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (‘Luanda Guidelines’) furthermore provide that “[A]rrests shall only be carried out [...] pursuant to a warrant [...]”⁵³ and that the following rights shall be afforded to all persons under arrest:

⁴⁶ Ibid, para 41.

⁴⁷ Annex 4 to the Author’s Witness Statement, entitled: Press Article: The Deputy of the Ministry of Internal Affairs: Haqy Assembly has Deviated from Its Objectives In Libya [date not clear from translation].

⁴⁸ Author’s Witness Statement, paras 15-19.

⁴⁹ Ibid, paras 20 – 29.

⁵⁰ Ibid, paras 32 – 53.

⁵¹ Article 9 (1) of the ICCPR and Article 6 of the African Charter.

⁵² Human Rights Committee, *Mukong v. Cameroon*, Communication No. 458/1991, 21 July 1994, para. 9.8, and Human Rights Committee, *Marinich v. Belarus*, Communication No.1502/2006, 16 July 2010, para. 10.4.

⁵³ ACHPR, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, adopted at the 55th Ordinary Session of the African Commission, held from 28 April to 12 May 2014 in Luanda, Angola, (‘Luanda Guidelines’), Guideline 3.

- a. The right to be free from torture and other cruel, inhuman and degrading treatment and punishment.
- b. The right to be informed of the reasons for their arrest and any charges against them.
- d. The right of access, without delay, to a lawyer of his or her choice, or if the person cannot afford a lawyer, to a lawyer or other legal service provider, provided by state or non-state institutions.⁵⁴

76. The Author submits that the authorities failed entirely to comply with those standards. None of the arrests made were based on any grounds established by Libyan law, nor were they effected in accordance with any procedure established by Libyan law.⁵⁵ On 19 July 2012, the Author was stopped at a makeshift checkpoint allegedly on the basis that her car had to be checked for explosives. However, there was no basis for any suspicion that her car had explosives in it, nor was any basis for suspicion ever given to the Author. Indeed, she was questioned on entirely unrelated matters. On 9 August 2012, she was taken from her hotel room in Benghazi to a compound by the 17th February brigade, and then questioned by Ahmed Syed from the Defence Ministry, and held from about 1pm till late at night. The Author was again arbitrarily arrested on 11 August 2012 in Benghazi airport at around 8am by 17th February Brigade militia members and subsequently detained and subjected to torture and ill-treatment.

77. On none of these occasions was the Author presented with a warrant, she was not charged with any crime nor did she have the right to a lawyer. Further, none of the arrests and detentions were reasonable and necessary in the circumstances: on no occasion had the Author either committed or been accused of any crime and she was never given a basis for her arrest and detention.

78. On each of these occasions, therefore, the Author's right to be free from arbitrary arrest and detention were violated.

VII.1.3. Freedom of expression

79. The Author submits that the State party is responsible for a violation of her right to freedom of expression.

80. The right to freedom of expression includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media.⁵⁶ The Human Rights Committee confirmed that "[T]he right for an individual to express his political opinions, including obviously his opinions on the question of human rights, forms part of the freedom of expression guaranteed by article 19 of the Covenant."⁵⁷ The Committee underlined that the "right to freedom of expression is of paramount importance in any democratic society."⁵⁸ Any restriction to the exercise of the right to freedom of expression must be

⁵⁴ Ibid, Guideline 4.

⁵⁵ See e.g. Article 32 of the Libyan Criminal Procedure Code, providing that there should be no arrest without order from the competent authorities in accordance with law; Article 106 Criminal Procedure Code requiring that individuals have a right to a lawyer upon arrest.

⁵⁶ See e.g. Article 19 ICCPR, Article 10 and Article 11 of the African Charter.

⁵⁷ Human Rights Committee, *Kivenmaa v. Finland*, Communication 412/1990, 31 March 1994, para. 9.3

⁵⁸ Human Rights Committee, *Park v. Republic of Korea*, Communication No. 628/1995, 20 October 1998, paras.10.3.

proportionate and “meet a strict test of justification,” such as for instance to protect national security or public order.⁵⁹

81. The Author had attempted to exercise her freedom of expression on the subject of women’s human rights in a number of ways: by organising a demonstration concerning women’s rights issues;⁶⁰ by speaking out about women’s rights on Libyan television;⁶¹ by being interviewed by filmmakers about the situation of women in Tripoli;⁶² by working with foreign documentary makers and appearing in the documentary being interviewed about her views on women’s human rights in Libya.⁶³

82. The Author submits that the torture and multiple arbitrary arrests and detentions she was subjected to were motivated in part by her exercise of her right to freedom of expression. The authorities arrested and detained her while participating in a workshop on women’s rights, and subsequently interrogated her, amongst other things, about her activities as a women human rights defender and her non-governmental organisation. The authorities’ conduct was designed to intimidate her and discourage her from expressing her views publicly as a women’s human rights defender.⁶⁴ The Author’s actions did not constitute a threat to national security or public order. In any event, the measures taken by the authorities to prevent the Author from exercising her right to freedom of expression were clearly disproportionate.

VII.1.4. Freedom of association

83. The State party is furthermore responsible for a violation of the Author’s right to freedom of association. The Human Rights Committee has observed that “the right to freedom of association relates not only to the right to form an association but also guarantees the right of such an association freely to carry out its statutory activities.”⁶⁵ Just like the right to freedom of expression, any restriction of the right to association must be justifiable and proportionate.

84. The Author had attempted to exercise her freedom of association by founding and running Hakki, a women’s rights organisation.⁶⁶ As outlined above, in response, the authorities arrested, detained and subsequently tortured and ill-treated the Author. During her detention she was questioned about her organisation and the organisation was accused of being not a women’s rights organisation but a prostitution organisation that also helped Jews enter Libya.⁶⁷

85. The Author submits that the restrictions of her right to association were not justified and clearly disproportionate. The treatment she suffered had a discriminatory purpose and effect of intimidating her into ceasing to exercise her freedom of association in running Hakki freely.⁶⁸

VII.1.5. Gender-based violence

⁵⁹ Ibid.

⁶⁰ Author’s Witness Statement, paragraph 3.

⁶¹ Ibid, paragraph 8.

⁶² Ibid, paragraph 9.

⁶³ Ibid, paragraph 12.

⁶⁴ See Annex 5b to the Author’s Witness Statement, Email terminating Hakki project dated 4 September 2012, and Annex 5c to the Author’s Witness Statement, Letter accepting termination of Hakki project, dated 18 September 2012.

⁶⁵ Human Rights Committee, *Belyatsky et al. v. Belarus*, Communication No. 1296/2004, 24 July 2007, para 7.2.

⁶⁶ See Annex 1 to the Author’s Witness Statement, Certificate of Registration for Hakki Organisation (dated 31 May 2012 and translated from Arabic on 26 September 2012) and Author’s Witness Statement, para 2.

⁶⁷ Author’s Witness Statement, para 42.

⁶⁸ See Annexes 5b and 5c to the Author’s Witness Statement.

86. The violations outlined above constitute gender-based violence. This Committee's General Recommendation 19 (GR 19) defines gender-based violence as "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence."⁶⁹ GR 19 does not define the term 'disproportionately', yet "it applies to both forms of violence that are committed against women in greater numbers than against men, and violence that has a disparate impact upon women's lives."⁷⁰ The Committee confirms that gender-based violence impedes enjoyment of specific rights, including the right not to be subject to torture or ill-treatment and the right to liberty and security of the person.⁷¹ In *M.E.N. v Denmark*, the Committee recalled GR 19 and reiterated that this General Recommendation "clearly placed violence against women within the ambit of discrimination against women by stating that gender-based violence is a form of discrimination against women."⁷² With respect specifically to torture and ill-treatment, the Committee stated:

Gender-based violence is outlawed under human rights law, primarily through the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The Committee against Torture, in its general comment No. 2, has explicitly situated gender violence and abuse within the scope of the Convention against Torture.⁷³

87. In the present case, members of the 17th February Brigade and the SCC subjected the Author to various forms of violence as outlined above. As will be outlined in the following paragraphs, the treatment inflicted upon the author was inherently discriminatory and amounted to gender based violence as it was directed against the Author in her capacity as a woman. Furthermore, the violence was inflicted intentionally to stop the Author from continuing her work as a women's human rights defender (WHRD) working on women's rights.

VII.1.6. Discriminatory nature of the Author's treatment

88. The alleged violations outlined above were based on an inherently discriminatory treatment inflicted upon the Author because of the Author's sex and her work as a WHRD working particularly on the rights of women. Amnesty International described the Author as "an outspoken human rights activist calling for the promotion of women's rights."⁷⁴ She had organised a high profile demonstration on women's rights issues (anger day of Libyan women), spoke out publicly about women's rights and also registered her own organisation working for women's rights (Hakki).

89. The Author's treatment is emblematic for treatment suffered by many WHRDs. While both male and female human rights defenders can be subject to stigmatisation as a result of their work, it is established that WHRDs often face further stigmatisation by virtue of their sex or the gender- or sexuality-based rights for which they advocate.⁷⁵ The violence targeted at WHRDs should be

⁶⁹ CEDAW General Recommendation No. 19, adopted at the Eleventh Session, 1992 (contained in UN Doc A/47/38), 1992, (CEDAW GR 19), para 6.

⁷⁰ CEDAW Commentary, p.452.

⁷¹ CEDAW GR 19, para 7.

⁷² CEDAW, *M.E.N v Denmark*, Communication 35/2011, 26 July 2013, para 8.6

⁷³ *Ibid*, para 8.8.

⁷⁴ Annex 6, Author's witness statement, p.14.

⁷⁵ See e.g. Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, A/70/217, 30 July 2015, para 61.

understood in the context of a patriarchal culture where deeply-rooted stereotypes persist.⁷⁶ WHRDs are often victims of attack because they question that culture and, by their very actions and activism, challenge traditionally assigned roles,⁷⁷ which mandate that women should be confined to the private sphere. The Special Rapporteur on the situation of Human Rights Defenders has noted: “The prevalence of the alleged use of torture, as well as other forms of ill-treatment and mistreatment of women human rights defenders and those working on women’s rights or gender issues while in detention is alarming.”⁷⁸

90. The Author’s case furthermore falls within a pattern of discrimination of women in the State party. In its concluding observations on the State Party, this Committee has expressed its concern about “the persistence of entrenched, traditional stereotypes regarding the roles and responsibilities of women and men in the family and in society at large, which are reflected, in part, in women’s educational choices, their situation in the labour market and their low participation in political and public life.”⁷⁹ The Human Rights Committee has stated in its Concluding Observations on Libya that “it reiterates its previous concern that inequality between women and men continues to exist in many areas, in law and practice...”⁸⁰

91. Whilst these comments were made before the 2011 revolution, NGO reports from 2012/2013 confirm that discrimination against women and inequality between men and women persisted at the time of the events described in this complaint. Amnesty International, in its letter of October 2012 in support of the Author, stated with respect to the relevant period:

The prevailing lawlessness in Libya, compounded by the presence of Islamist-leaning armed militias, increases the risk of harassment faced by women behaving differently from the social norm. Amnesty International received reports of Islamist-leaning armed militias capturing individuals they consider to behave immorally – for instance unmarried couples mixing in public or women they deemed dressed inappropriately – detaining them at their bases outside the framework of the law; torturing or other-wise ill-treating them; and forcing them to sign attestations of no longer engaging in such behaviours prior to releasing them.⁸¹

92. Human Rights Watch described how in 2012 statements were made by “some male political and religious leaders suggesting they will tolerate continued discrimination against women in both law and practice.”⁸² For example, some leaders said that “Libya should enact new laws that embody more conservative interpretations of Sharia, or Islamic law, including on polygamy.”⁸³ In general, the fall of the Gaddafi government enabled “a wide spectrum of groups and parties to form, including those who oppose the full integration of international standards on women’s rights into Libyan

⁷⁶ Ibid, para 62.

⁷⁷ Ibid.

⁷⁸ Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/16/44, 20 December 2010, para. 81.

⁷⁹ CEDAW, Concluding Observations on Libya, CEDAW/C/LBY/CO/5, 6 February 2009, para. 21.

⁸⁰ Human Rights Committee, Concluding Observations on Libya, CCPR/C/LBY/CO/4, 15 November 2007, para 11.

⁸¹ Annex 6, Author’s Witness Statement, p.14.

⁸² Human Rights Watch, ‘A Revolution for All: Women’s rights in the new Libya’, May 2013, p.13, at

https://www.hrw.org/sites/default/files/reports/libya0513_brochure_LOWRES_0.pdf.

⁸³ Ibid.

law.”⁸⁴ Amnesty International’s 2013 report on Libya confirmed that “[W]omen continued to face discrimination in law and practice.”⁸⁵

93. The context in which the violence was perpetrated against the Author falls into these patterns. Shortly after the Author had organised and participated in the demonstration “Anger Day of Libyan Women,” in February 2012, the commander of the 17th February Brigade, Ismail al-Salabi, published an article on his Facebook page in which he criticised the protestors as having forgone their culture. He expressed surprise that none of the women were veiled or covered their hair which he claimed was not representative of Libyan society.⁸⁶ Authorities arrested the Author on 9 August 2012 during a workshop with DCA regarding promoting women’s rights in the constitution.⁸⁷ During this second interrogation, she was told that it was forbidden (*haram*) for women to travel alone; they asked her how and why she had travelled to Benghazi on her own.⁸⁸ The authorities accused the Author of not being a Muslim,⁸⁹ with the implication that she had broken gender norms for Muslim women. One of the SCC members used the gender-specific verbal abuse terms “bitch and whore”⁹⁰ and accused her of having relations with a Jew and being an Israeli spy. Immediately following the episode of torture, another member of the SCC accused the Author’s organisation, Hakki, of not being a women’s rights organisation but a prostitution organisation that helped Jews come to Libya and helped Israel.⁹¹ The Author was also accused of being an Israeli spy as she broke male stereotypes for “being a strong woman” unlike most Libyan women, given that she had returned to Benghazi even after having been arrested there on a prior occasion.⁹²

94. In light of the foregoing, it is apparent that the authorities’ treatment and harassment of the Author was motivated by gender-based, cultural and religious stereotypes about women. Both the Author’s work as a WHRD and her association with members of other religions challenged local norms on a woman’s traditional role.

Conclusion

95. The Author submits that she was subjected to: (i) gender-based violence in breach of her right to be free from torture and ill- treatment; (ii) arbitrary arrest and detention in breach of her right to liberty and security of person; and (iii) a breach of her right to freedom of expression and association. These violations were all motivated by discrimination on the part of the State on the basis of her sex contrary to Article 1 of the Convention.

VII.2. Violation of Article 2(d)

96. Under Article 2(d) of the Convention, States undertake “to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.” Article 2(d) imposes an obligation of result “which is violated

⁸⁴ Ibid.

⁸⁵ Amnesty International, ‘Annual Report: Libya 2013’, May 2013, at <http://www.amnestyusa.org/research/reports/annual-report-libya-2013?page=show>.

⁸⁶ See Annex 6, Author’s Witness statement, p.8.

⁸⁷ Ibid, para 20.

⁸⁸ Ibid, para 25.

⁸⁹ Ibid, para 35.

⁹⁰ Ibid, para 37.

⁹¹ Ibid, para 41.

⁹² Ibid, para 42.

by a failure to achieve the specified outcome.”⁹³ As the CEDAW Commentary states, “[T]his provision applies directly to all acts of State organs and the acts of other persons or entities which are attributable to the State under the law of State responsibility.”⁹⁴

97. As established above, the violations perpetrated against the Author by the State party were discriminatory. The Author was targeted because she is a woman breaking gender-based norms and subjected to treatment designed to intimidate her into ceasing her women’s rights work. The nature of the acts themselves was also discriminatory since the Author suffered gender-specific abuse. These acts thus represent a clear breach of Article 2(d) by the State party.

VII.3. Violation of Article 3

98. Article 3 imports the rights to, *inter alia*, freedom from torture, liberty and security of person and freedom of expression and association into the Convention through its inclusion of “human rights and fundamental freedoms” and its specific mention of “political, social, economic and cultural fields.”⁹⁵ Thus, the discriminatory breaches of these rights as established above represent a *prima facie* breach of the State party’s obligations under Article 3. As with Article 2, Libya’s obligation is tripartite – to respect, protect, and fulfil.⁹⁶ The obligation to respect requires States parties “not to take measures that undermine the full advancement and development of women and their enjoyment of human rights and fundamental freedoms.”⁹⁷

99. The obligation to fulfil “imposes an ongoing and dynamic obligation to adopt and apply the measures needed to secure women’s advancement.”⁹⁸ With respect to the role of women’s NGOs in achieving the objectives of Article 3, the Committee in several concluding observations has noted their beneficial work⁹⁹ and noted its concern about the “lack of an enabling environment for the establishment and operation of women’s non-governmental organizations”¹⁰⁰ and about closure of women’s NGOs for lack of funding.¹⁰¹

100. In the present case, the authorities actively sought to stop the Author’s NGO work on women’s rights issues. The violations committed against her, as outlined above, ultimately forced her to close her women’s rights NGO and flee the country. The State itself caused this through the actions of its officials. This therefore represents a breach of Article 3.

VII.4. Violation of Article 5(a)

101. Article 5 (a) of the Convention obliges States Parties to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary

⁹³ CEDAW Commentary, p.85.

⁹⁴ *Ibid*, 86.

⁹⁵ *Ibid*, p.102.

⁹⁶ See CEDAW General Recommendation 25 on article 4 (1), on temporary special measures, 2004, (CEDAW GR 25) which draws on the language of Article 3 in asserting that “States parties to the Convention are under a legal obligation to respect, protect, promote and fulfil this right to non-discrimination for women and to ensure the *de jure* as well as *de facto* equality with men” (cited in CEDAW Commentary, p.115).

⁹⁷ CEDAW Commentary, p.116.

⁹⁸ *Ibid*, p.120.

⁹⁹ See e.g. CEDAW, Concluding Observations on Uzbekistan, CEDAW/C/UZB/CO/3, 25 August 2006, para 17; see also CEDAW, Concluding Observations on Ethiopia, CEDAW/C/ETH/CO/6-7, 27 July 2011, para 29(a).

¹⁰⁰ See e.g. CEDAW, Concluding Observations on Belarus, A/59/38, 18 March 2004, paras 343-4.

¹⁰¹ See e.g. CEDAW, Concluding Observations on Uzbekistan, CEDAW/C/UZB/CO/3, 25 August 2006, para 17.

and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

102. Article 5 acknowledges that gender stereotypes and fixed parental gender roles lie at the basis of discrimination against women.¹⁰² This Committee has stated (with respect to the Convention generally) that States parties’ obligation “is to address prevailing gender relations and the persistence of gender-based stereotypes that affect women” through both individual acts and legal and societal structures and institutions.¹⁰³ The Committee has recognised that stereotypes “constitute barriers”¹⁰⁴ and “constitute the most serious obstacles”¹⁰⁵ to women’s full participation in public life. In *AT v Hungary*,¹⁰⁶ which concerned the failure of the State to protect the author in that case from violence by her husband, the Committee found a violation of Article 5(a) (in conjunction with Article 16), commenting that traditional attitudes by which women are regarded as subordinate to men contribute to violence against them.¹⁰⁷ In *Vertido v The Philippines*, the Committee found that the conduct of a rape trial, involving reliance on gendered assumptions and stereotypes about the proper behaviour of a victim of sexual assault, breached, inter alia, Article 5(a).¹⁰⁸ In *Abramova v Belarus* the Committee stated: “the disrespectful treatment of the author by State agents, namely male prison staff, including inappropriate touching and unjustified interference with her privacy constitutes sexual harassment and discrimination within the meaning of articles 1 and 5 (a) of the Convention and its general recommendation No. 19 (1992).”¹⁰⁹
103. The Committee previously identified gendered stereotypes about the role of women in the State party’s society finding that there exists in Libya “the persistence of entrenched, traditional stereotypes regarding the roles and responsibilities of women and men in the family and in society at large, which are reflected, in part, in women’s educational choices, their situation in the labour market and their low participation in political and public life.”¹¹⁰ These gendered stereotypes contributed to the Author being targeted for torture, arrest and arbitrary detention in the first place (for her prominent work on women’s rights). They are also reflected in her treatment whilst in detention where she suffered gender-specific abuse (being called a bitch and a whore, being accused of being an Israeli spy because she was a strong woman and having her women’s rights organisation called a prostitution organisation).
104. The Author submits therefore that the State party is responsible for a breach of Article 5(a) of the Convention.

VII.5. Violation of Article 7(c)

105. Article 7 deals with States parties’ obligations to realise women’s political rights. It is unique in human rights law because under Article 7(c), it encompasses non-discrimination with regard to

¹⁰² CEDAW Commentary, pp. 146 – 148.

¹⁰³ CEDAW GR 25, para 7.

¹⁰⁴ CEDAW, Concluding Observations on Cook Islands, CEDAW/C/COK/CO/1, 10 August 2007 para 28.

¹⁰⁵ CEDAW, Concluding Observations on Cyprus, A/51/38, 23 January 1996.

¹⁰⁶ CEDAW, *A.T. v. Hungary*, Communication No. 2/2003, 26 January 2005, para. 8.1.

¹⁰⁷ *Ibid*, para 9.4

¹⁰⁸ CEDAW, *Vertido v Philippines*, Communication No. 18/2008, 1 September 2010, para 8.9

¹⁰⁹ CEDAW, *Inga Abramova v. Belarus*. Communication No. 23/2009, 27 September 2011, para.7.7.

¹¹⁰ CEDAW, Concluding Observations on Libya, CEDAW/C/LBY/CO/5, 6 February 2009, para. 21.

participation in NGOs.¹¹¹ The Committee has confirmed that political and public life includes women's organisations¹¹² and has recommended that State parties provide an environment that encourages the establishment of women's human rights organisations.¹¹³ Further, the Author submits that the rights to freedom of expression and freedom of assembly are also protected by Article 7 as they are "essential adjuncts" to the political and public rights protected by this provision.¹¹⁴ In its General Recommendation 23, this Committee stated that "prevailing negative attitudes towards women's political participation" inhibit women's involvement in the public or political life of their communities.¹¹⁵

106. As with its other obligations under CEDAW, the State party is obliged to respect, protect and fulfil its obligations under Article 7. Under its obligation to protect, Libya is required to exercise due diligence by taking preventive, remedial, punitive or compensatory measures against interference by third parties.¹¹⁶
107. Libya has failed in its obligation to respect and fulfil the Author's rights under Article 7(c) in that State officials tortured and arbitrarily arrested and detained the Author because of her prominent involvement in women's rights issues, including the fact that she had founded her own women's rights organisation Hakki. As outlined above, the Author was repeatedly prevented from, and punished for working on women's rights. The Author submits that the State party not only failed to take all appropriate measures to ensure to women the right to work for NGOs and participate in public and political life but that State officials took harmful action against the Author expressly to discourage such participation.
108. The State party has also failed in its obligation to protect the Author's rights under Article 7(c). Since the Author's public involvement in women's rights issues became prominent, after the organisation of the demonstration on 7 February 2012, the Author was intimidated by hateful emails, letters and on social media websites. Further, after her arrest and detention in August 2012, the Author continued to receive hate mail, including letters from the public saying that they would kill her if they saw her in the street. The authorities failed to provide the Author with protection against those threats. To the contrary, officials stated that the Author had foregone her culture and told her that she should be executed and that she was lucky to be alive. Authorities sought to coerce the Author to work for the SCC. Ultimately, the Author was therefore unable to return to her NGO work or work as an activist. She terminated all the project contracts she had through Hakki and cancelled work trips to Morocco and Switzerland, and eventually was forced to flee Libya to seek asylum in the UK.
109. The authorities pressured the Author to give up her work as an activist and failed to exercise due diligence against interference with the Author's rights by third parties and thus breached its obligations under Article 7(c).

¹¹¹ CEDAW Commentary, p.198.

¹¹² CEDAW, General Recommendation No.23 on Article 7 (political and public life), 1997, (CEDAW GR 23), para. 5.

¹¹³ CEDAW, Concluding Observations on Democratic People's Republic of Korea, CEDAW/C/PRK/CO/1, 22 July 2005, para 52; see also CEDAW, Concluding Observations on Mozambique, CEDAW/C/MOZ/CO/2, 11 June 2007, para 8 and CEDAW, Concluding Observations on Nigeria CEDAW/C/NGA/CO/6, 3 July 2008, para 210 where the Committee commends the States in question for close cooperation and collaboration with women's organisations in the promotion of human rights.

¹¹⁴ Human Rights Committee, General Comment No 25: The right to participate in public affairs, voting rights and the right of equal access to public service, 12 July 1996, para.26..

¹¹⁵ CEDAW GR 23, para 20(d).

¹¹⁶ CEDAW Commentary, p.216.

VII.6. Violation of Article 2(b)

110. Pursuant to Article 2(b), the State party has an obligation to ensure that legislation prohibiting discrimination and promoting equality of women and men provides appropriate remedies for women who are subjected to discrimination contrary to the Convention. In the words of General Recommendation 28, this “obligation requires that States parties provide reparation to women whose rights under the Convention have been violated. Without reparation the obligation to provide an appropriate remedy is not discharged. Such remedies should include different forms of reparation, such as monetary compensation, restitution, rehabilitation, and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women.”¹¹⁷ General Recommendation 19, para 24 (i) provides that for victims of gender-based violence, “Effective complaints procedures and remedies, including compensation, should be provided”.¹¹⁸
111. The Author has received no response to her complaint submitted to the Libyan Prosecutor on 10 October 2013; there has been no investigation into her complaint and those responsible have not been held to account. The Author has also not received any other form of redress. The State party is therefore in breach of Article 2(b).

VIII. Remedies sought in the present case

112. Pursuant to Article 7(3) of the Optional Protocol to the Convention, the Author seeks a finding of the violation of her rights as provided for under Articles 1, Articles 2(b), 2(d) and (e), Articles 3, 5(a) and 7(c) of the Convention, and appropriate remedies. As set out by this Committee, such remedies should include different forms of reparation, such as “monetary compensation, restitution, rehabilitation, and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women.”¹¹⁹
113. The Author seeks the following specific and general recommendations:

VIII.1. Specific Recommendations

Compensation

114. Pursuant to Article 2(b) of the Convention and in light of paragraph 32 of General Recommendation No. 28, and paragraph 24(i) of General Recommendation No. 19, the Author seeks monetary compensation for the harm suffered as a result of the violations of her rights under the Convention. The amount of the compensation should be adequate and proportionate to the seriousness of the violations of the Convention in the present case and the grave damage and sufferings caused by

¹¹⁷ CEDAW, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, CEDAW/C/GC/28, (CEDAW GR 28) para. 32.

¹¹⁸ CEDAW GR 19, para. 24(i).

¹¹⁹ CEDAW GR 28, para. 32.

them, taking into consideration the serious and lasting physical and mental consequences, as well as the forced exile, that the Author suffered as a result of the violations.

115. In particular, the Author seeks monetary compensation for the following:
- Confiscation of, and failure to return her belongings, including her laptop, during the arbitrary arrest and detention on 19 July 2012;
 - Loss of her job as financial assistant for a heavy transportation company that transported flour and wheat across Libya;
 - Costs of the Author's escape and money spent to travel to and settle in the UK;
 - Rent for an apartment from the moment of her arrival in the UK;
 - Costs incurred in seeking and obtaining refugee status in the UK.
116. The Author also seeks monetary compensation for the moral damages related to:
- The distress, anxiety and humiliation caused by the violations of her rights under the Convention, the injuries inflicted on her and the development of post-traumatic stress disorder as a consequence of the incidents;
 - The damages to her reputation for having been portrayed in the Libyan media as a traitor;
 - Having to abandon her work as a women's human rights defender, having to close her organization Hakki and terminating as a consequence all her project contracts;
 - The suffering caused by having to flee Libya and being separated from her family;
 - The distress caused by having to find a job upon arrival in the United Kingdom in order to maintain herself.

Rehabilitation

117. The Author continues to suffer from psychological trauma (as set out by Dr Mary Robertson in Appendix 4) and requires ongoing psychological assistance for her rehabilitation. As the Author is no longer present in the State party due to fleeing in fear of her life, the State Party should provide the Author with funds to enable her to attend psychological treatment in her current country of residence.

Measures of satisfaction

118. The State party should carry out a prompt, thorough and independent investigation into the discrimination, arbitrary arrest and detention and torture of the Author, capable of establishing the facts and identifying those responsible and take appropriate measures to hold those responsible to account.

VIII.2. General Recommendations

119. The Human Rights Committee has stated in its Concluding Observations on the State party that "it reiterates its previous concern that inequality between women and men continues to exist in many areas, in law and practice... ." ¹²⁰ Further, this Committee has expressed its concern about "the persistence of entrenched, traditional stereotypes regarding the roles and responsibilities of women

¹²⁰ Human Rights Committee, Concluding Observations on Libya, CCPR/C/LBY/CO/4/CRP.1, 30 October 2007, para 11.

and men in the family and in society at large, which are reflected, in part, in women's educational choices, their situation in the labour market and their low participation in political and public life.”¹²¹ The Committee was also concerned that “the State party ha[d] not yet adopted comprehensive legislation to protect women against violence.”¹²² Although both these Concluding Observations were made before the 2011 Revolution, the NGO reports highlighted above in section VII.1.7 show that the same concerns remained during the period in which the violations of the Author’s rights took place.

120. In light of the above, the Author seeks general recommendations, including in particular to:
- (a) Adopt comprehensive legislation to protect women against violence.
 - (b) Take appropriate and effective measures to ensure that women can participate, on equal terms with men, in non-governmental organisations (NGOs), concerned with the public and political life of the country, including those NGOs concerned with women’s rights.
 - (c) Take appropriate and effective measures to ensure that women are not intimidated into ceasing their participation in the public and political life of the country.
 - (d) Ensure that perpetrators of violence against women are effectively investigated in a prompt, effective and impartial manner.
 - (e) Ensure access to criminal and civil remedies for women victims of violence and ensure that the safety of victims is guaranteed in this process.
 - (f) Ensure that all women victims of violence have access to effective victim protection and assistance, including counselling, health services and financial support.
 - (g) Ensure mandatory training for the police, judiciary and other law enforcement bodies with respect to combating violence against women, including training on: gender stereotypes; receiving and considering complaints of violence against women in a gender-sensitive manner.
 - (h) Strengthen efforts to overcome stereotypical attitudes regarding the roles and responsibilities of women and men within society.

¹²¹ CEDAW, Concluding Observations on Libya, CEDAW/C/LBY/CO/5, 6 February 2009, para. 21.

¹²² Ibid, para 23.

List of Appendices for the Communication: Magdulein Abaida v Libya

Appendix 1: Author's witness statement dated 9 October 2013

Annexes to Author's witness statement:

Annex 1:	Certificate of Registration of Hakki Organisation
Annex 2:	Article referring to my kidnapping (Arab-European Center of Human Rights & International Law)
Annex 3a:	Article referring to my kidnapping
Annex 3b:	Article referring to my kidnapping (Libyan Observatory for Human Rights)
Annex 3c:	Article referring to my kidnapping (Libyan Observatory for Human Rights)
Annex 4:	Copy of article referring to the Ministry of Interior's response to abduction
Annex 5a:	Hakki Organisation Project Proposal
Annex 5b:	Email from me terminating project (4 September 2012)
Annex 5c:	E-Letter from Creative accepting termination of proposal (18 September 2012)
Annex 6:	Letter from Amnesty International supporting my request for asylum in the United Kingdom.
Annex 7:	Photos taken of me after the abuse I experienced on 11 August 2012

Appendix 2: Complaint to Libyan Prosecutor General, dated 10 October 2013

Appendix 3: Receipt from Libyan Prosecutor General's office dated 21 October 2013.

Appendix 4: Dr Mary Robertson, Medico-Legal Report, 10 October 2013.

Appendix 5: Magdulein Abaida UK residence permit confirming refugee status, granted 1 November 2012.