



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Eighty-seventh session  
10-28 July 2006

**VIEWS**

**Communication No. 1297/2004**

*Submitted by:* Ali Medjnoune (represented by counsel, Rachid Mesli)

*Alleged victim:* Malik Medjnoune

*State party:* Algeria

*Date of communication:* 11 June 2004 (initial submission)

*Document references:* Special Rapporteur's rule 97 decision, transmitted to the State party on 29 June 2004 (not issued in document form)

*Date of adoption of Views:* 14 July 2006

*Subject matter:* Apprehension and continued captivity, incommunicado detention, detention without trial

*Procedural issues:* None

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

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*Substantive issues:* Prohibition of torture and cruel, inhuman and degrading treatment; right to liberty and security of the person; arbitrary arrest and detention; respect for the inherent dignity of the human person; right to a fair trial; right to be promptly informed of the charges; right to be tried within a reasonable time

*Articles of the Covenant:* Articles 7; 9, paragraphs 1, 2 and 3; 10, paragraph 1; 14, paragraphs 3 (a), (c) and (e)

*Articles of the Optional Protocol:*

On 14 July 2006, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1297/2004. The text of the Views is appended to the present document.

[ANNEX]

**Annex**

**VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5,  
PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE  
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

**Eighty-seventh session**

**concerning**

**Communication No. 1297/2004\***

*Submitted by:* Ali Medjnoune (represented by counsel, Rachid Mesli)  
*Alleged victim:* Malik Medjnoune (the author's son)  
*State party:* Algeria  
*Date of communication:* 11 June 2004 (initial submission)

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

*Meeting on 14 July 2006,*

*Having concluded* its consideration of communication No. 1297/2004, submitted to the Human Rights Committee on behalf of Mr. Malik Medjnoune under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the author of the communication, and the State party,

*Adopts* the following:

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Mr. Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

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

1. The author of the communication, dated 11 June 2004, is Mr. Ali Medjnoune, who submits the communication on behalf of his son Malik Medjnoune, born on 15 February 1974, who is an Algerian national currently detained in the civil prison at Tizi-Ouzou, Algeria. The author states that his son is a victim of violations by Algeria of articles 7; 9, paragraphs 1, 2 and 3; 10, paragraph 1; and 14, paragraphs 3 (a), (c) and (e), of the International Covenant on Civil and Political Rights. He is represented by counsel, Rachid Mesli. The Covenant and its Optional Protocol entered into force for the State party on 12 December 1989.

#### Facts as presented by the author

2.1 The author states that his son was abducted at 8.30 a.m. on 28 September 1999, on the public highway some 200 metres from his home, by three armed individuals in plain clothes (members of the Intelligence and Security Department (DRS)) in a white Renault car.<sup>1</sup> They threatened him with their guns, fired a shot and forced him into the car in front of witnesses. He was first taken to a military barracks in the centre of Tizi-Ouzou, where he was beaten, and was then put in the boot of a car and taken to another barracks some 100 kilometres away, the "Antar" Centre in Ben-Aknoun (Algiers), a DRS facility. He was handed over to a Captain Z. and a colleague and tortured for two days by the Algerian security services: he was beaten all over his body with a pickaxe handle; subjected to the *chiffon* torture, whereby a rag is stuffed into the victim's mouth and their stomach filled with dirty water to cause a sensation of suffocation and drowning; tortured with electric shocks all over his body; etc.<sup>2</sup> He was also questioned about his time in prison (three years between 1993 and 1996) and the people he met there, and about whether he had kept in touch with them (particularly a person who had fled abroad), and whether he himself intended to go abroad.

2.2 The author states that he lodged a complaint concerning his son's disappearance with the prosecutor in Tizi-Ouzou on 2 October 1999. The complaint was registered as case No. 99/PG/3906. The prosecutor met the author on 15 October and 8 November 1999 and told him that he knew nothing of the abduction. Yet he did not order an investigation as required by law for an offence of that gravity. The son states that he was brought before the prosecutor on 4 March 2000, at the same time as another person (C.H.).<sup>3</sup> He appeared before the same prosecutor a second time on 6 March 2000, again with that person, after which he was taken back to the DRS facility at Ben-Aknoun, where he was held for nearly two months by order of the prosecutor who had received the complaint of disappearance on 2 October 1999. Under Algerian law this constitutes an offence, and complicity in an offence, of abduction and false arrest under the Criminal Code, articles 292, 293 and 293 bis.<sup>4</sup> Throughout this period, the son was held incommunicado in particularly inhumane conditions, for a full 218 days up to 2 May 2000, when he appeared before the examining magistrate of the Tizi-Ouzou court. The author points out that the legal duration of police custody under Algeria's Code of Criminal Procedure is a maximum of 12 days.<sup>5</sup> The author states that, on 2 May 2000, the examining magistrate charged his son with being an accessory to the murder of the Kabyle singer Matoub Lounès and with membership of an armed group, and that his son was placed in pretrial detention.

2.3 As regards domestic remedies, the author points out that he lodged a complaint in respect of his son's incommunicado detention, but that the prosecuting service, the only body with the power to take action, failed to do so. As to his son's detention without trial since 2 May 2000 in the civil prison at Tizi-Ouzou, Algerian law provides that detention without trial may not exceed 16 months (four periods of four months each).<sup>6</sup> After two extensions, this four-month period may, exceptionally, be extended by the indictments division for a further, non-renewable, four-month period.<sup>7</sup> At the end of that time, the accused must be brought before the trial court at its next sitting.<sup>8</sup> In the matter in question, since the investigation was completed in April 2001, the case should have been referred to the June 2001 sitting but was not. The author's son therefore wrote to the indictments division asking for provisional release under article 128 of the Code of Criminal Procedure,<sup>9</sup> but his application was rejected by the indictments division of the Tizi-Ouzou court on 6 August 2001.<sup>10</sup> The son applied several more times, to no avail, the last application having been denied on 28 December 2003.<sup>11</sup> All domestic remedies have thus been exhausted.

2.4 The author states that the case was submitted to Amnesty International on 9 December 1999 and to the United Nations Working Group on Enforced or Involuntary Disappearances in April 2000.

### **The complaint**

3.1 The author claims that Malik Medjnoune is the victim of a violation of articles 7; 9, paragraphs 1, 2 and 3; 10, paragraph 1; and 14, paragraphs 3 (a), (c) and (e), of the International Covenant on Civil and Political Rights. His most basic rights have been violated, and in particular his right to liberty, to be informed at the time of arrest, to be brought promptly before a judge or other officer authorized by law to exercise judicial power, to challenge the legality of his detention, to be tried within a reasonable time and, lastly, to be treated with humanity while in detention and not subjected to torture.

3.2 With regard to the allegations under article 7, counsel states that there can be no question that Mr. Medjnoune was abducted by the Algerian security services on 28 September 1999, held incommunicado and tortured. He states that incommunicado detention in an unrecognized place of detention, without the slightest contact with the outside world and for a prolonged period, is considered to be an act of torture in itself, and that the cruel and inhuman treatment to which the son was subjected constitutes a violation of articles 7 and 10 of the Covenant.

3.3 Under article 9, counsel points out that the abduction of Malik Medjnoune and his detention for nearly eight months are not in accordance with domestic regulations, either as to substance or as to procedure, and constitute a violation of article 9, paragraph 1. Moreover, in violation of article 9, paragraph 2, the son was not informed of the facts or reasons behind his abduction or of the charges against him until he was brought before the examining magistrate eight months later. As to the alleged violation of article 9, paragraph 3, the son was not brought promptly before a judge<sup>12</sup> and was detained arbitrarily. The prosecutor refused to bring Mr. Medjnoune before an examining magistrate, instead sending him back to the security services. Furthermore, the son's continuing detention more than four years after his appearance before the examining magistrate on 2 May 2000 constitutes a violation of article 9, paragraph 3,

of the Covenant. Lastly, counsel points out that Mr. Medjnoune was held incommunicado in utterly inhuman conditions for nearly eight months, during which time he suffered torture and brutality of the worst kind.

### **State party's submission on the admissibility and merits of the communication**

4.1 By note verbale of 28 December 2004, the State party explains that, in the case of the murder of Matoub Lounès, a judicial investigation against a person or persons unknown on 30 June 1998 was opened by the examining magistrate in Tizi-Ouzou. After inquiries lasting several months, and partly on the basis of information provided by a former terrorist turned State's evidence, a number of people were arrested and brought before the courts, including Malik Medjnoune, who was charged with murder and membership of a terrorist organization. On completion of the judicial investigation, the examining magistrate, on 2 December 2000, ordered the file to be sent to the public prosecutor, who requested the referral of Malik Medjnoune and the co-perpetrators to the indictments division of the Tizi-Ouzou court. On 10 December 2000, the indictments division issued an order committing the accused for trial in the criminal court of Tizi-Ouzou on charges of membership of a terrorist organization and murder, which constitute offences under the Criminal Code, articles 87 bis and 255 ff. The accused applied to the Supreme Court for a judicial review of the order, but their application was denied on 10 April 2001. Hearings were then set for 5 May 2001 in the Tizi-Ouzou court, but adjourned because events in the region made it impossible to try the case in the conditions of calm required for proceedings of this nature. The case should very shortly be scheduled for trial in the Tizi-Ouzou criminal court, in accordance with the law.

4.2 With regard to the allegations of beatings and arbitrary detention in the course of police custody, the State party asserts that there is nothing in the complaint or in the supporting documentation to substantiate such allegations and they should therefore be rejected. As to the alleged violation of the provisions governing Malik Medjnoune's detention, articles 125 ff. of the Code of Criminal Procedure relate to provisional detention during the judicial investigation stage and not during the subsequent stage. Malik Medjnoune moved beyond that stage with the issuance of the 10 December 2000 order committing him for trial in the criminal court. The criminal court decided to adjourn the proceedings under article 278 of the Code of Criminal Procedure, which states that "the President of the Criminal Court may, either *proprio motu* or at the request of the Public Prosecutor's Office, adjourn to a later sitting any case that is not in his view ready to be tried at the sitting for which it has been scheduled". The complaint should therefore be rejected as groundless.

### **Author's comments on the State party's observations**

5.1 On 31 January 2005, counsel for the author notes in the first place that the State party does not contest the admissibility of the communication, which should therefore be declared admissible as to the form since all domestic remedies have been exhausted and the State party has nothing to say on the matter. On the merits, counsel maintains that the State party's arguments to the effect that the arbitrary detention and beatings have not been substantiated do not warrant serious consideration, since the State party does not contest the abduction, the duration and place of incommunicado detention, the complaint lodged by the author or the communication received by the Working Group on Enforced or Involuntary Disappearances. There can thus be no reasonable doubt that Malik Medjnoune underwent torture and beatings

while in incommunicado detention, this being a practice that is widespread in the State party and regularly reported by the Special Rapporteur and by human rights NGOs. Lastly, counsel argues that 218 days' incommunicado detention without the slightest contact with the outside world constitutes an act of torture in itself.

5.2 As to Malik Medjnoune's ongoing detention, counsel points out that the State party acknowledges that the investigation into the case ended on 2 December 2000 and that the trial date was set for 5 May 2001, yet claims that Mr. Medjnoune has not been in provisional detention since 10 December 2000. His continuing detention is said to be in accordance with article 278 of the Code of Criminal Procedure, a provision which, if so interpreted, would allow the Public Prosecutor's Office, where the investigation stage is complete but no trial date has yet been set, to continue to detain any person indefinitely on any grounds it pleased. Such an interpretation, counsel argues, would give rise to a clear violation of the right to liberty of the person under article 9, paragraph 1, of the Covenant. While it is also true that, under article 279 of the Code of Criminal Procedure, "any case that is ready to be tried shall be submitted to the court at its next sitting", judicial practice in Algeria is such that only the Public Prosecutor's Office has the discretion to schedule a case for a given sitting of the criminal court. In counsel's view, the State party should be required to bring its legislation into line with the Covenant, inter alia by establishing a legal maximum limit for detention between the date of committal for trial by the indictments division and the date of the trial itself. It seems clear that the delay in bringing the author's son to trial cannot be considered a reasonable time.

5.3 On 1 and 3 February 2006, counsel for the author provided a copy of the latest ruling of the Tizi-Ouzou indictments division, handed down on 19 September 2005 and again denying Malik Medjnoune provisional release after more than six years' pretrial detention. The ruling is based on the Code of Criminal Procedure, article 123.<sup>13</sup> According to the indictments division, detention in this instance "is still necessary and his release would jeopardize the establishment of the truth", even though the investigation ended more than five years ago with an order committing the accused for trial in the Tizi-Ouzou criminal court, issued by that selfsame division on 10 December 2000. Yet the indictments division is reluctant to ask the prosecutor's office to set a trial date. Lastly, counsel states that the Algerian authorities are trying to intimidate the author's son into withdrawing his communication, and that he is under pressure to do so to have any hope of a trial.

### **State party's reply**

6. By note verbale dated 23 May 2006, the State party repeats that Mr. Medjnoune's detention is not arbitrary, since articles 125 ff. of the Code of Criminal Procedure relate to provisional detention during the judicial investigation stage and not during the subsequent stage. Mr. Medjnoune's case has reached the criminal court, which has adjourned proceedings under article 278 of the Code of Criminal Procedure. The State party explains that, while awaiting trial, the accused may at any time submit a request for provisional release to the indictments division, which Mr. Medjnoune has done. With regard to the latest denial of application, the appropriateness of that decision is not open to discussion, since the court is sovereign in its evaluation of the facts of the case and the desirability or otherwise of granting a request submitted to it by an accused. The State party explains that the case should very shortly be scheduled for trial in the criminal court. Furthermore, if he meets the legal requirements,

Mr. Medjnoune could avail himself of order No. 06-01 of 27 February 2006, on the implementation of the Peace and National Reconciliation Charter.<sup>14</sup> He could then be granted either extinction of the public right of action before his case came to trial or, were he to be tried and convicted, a commutation of the sentence or a pardon. The order is in the process of being implemented. Lastly, the State party maintains that the allegation that pressure is being exerted on Mr. Medjnoune to withdraw his communication is too vague and meaningless to be entertained. It amounts to no more than an assertion and provides no further detail as to either the precise nature of this pressure or which “Algerian authorities” are exerting it.

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

### **Consideration of admissibility**

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

7.2 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.

7.3 On the question of exhaustion of domestic remedies, the Committee notes that, in respect of the son’s incommunicado detention with the Algerian security services from 28 September 1999 to 2 May 2000, a complaint was lodged on 2 October 1999 on which the prosecutor’s office failed to act despite being the only body with the power to do so. As to the son’s detention without trial since 2 May 2000, he has made several applications for provisional release, all of which have been rejected without him ever having been brought to trial. Consequently, the Committee is of the view that the application of domestic remedies has been unreasonably drawn out and that the author has therefore met the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

7.4 With regard to the complaints under articles 7; 9, paragraphs 1, 2 and 3; and 10, paragraph 1, the Committee notes that the author has presented detailed allegations regarding his son’s apprehension, incommunicado detention and conditions of imprisonment, and regarding the ill-treatment to which he was allegedly subjected. Rather than replying to the various allegations, the State party merely says they are not substantiated. In this case, the Committee takes the view that the facts described by the author are sufficient to substantiate the complaints under article 7, paragraphs 1, 2 and 3, article 9, paragraph 1, and article 10 for the purposes of admissibility. The Committee also finds that the complaints under article 14, paragraph 3 (a) and (c), are sufficiently substantiated. As to the complaint under article 14, paragraph 3 (e), the Committee notes that the author’s son has not yet appeared before a judge to answer the charges against him. It accordingly considers that this complaint is incompatible *ratione materiae* under article 3 of the Optional Protocol. It therefore concludes that the communication is admissible under articles 7; 9, paragraphs 1-3; 10, paragraph 1; and 14, paragraph 3 (a) and (c), and proceeds to its consideration on the merits.



### **Consideration on the merits**

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

8.2 Concerning the complaint of incommunicado detention, the Committee notes the author's assertion that his son was arrested on 28 September 1999 and was missing until 2 May 2000. The Committee notes that the State party has not replied to the author's allegations, which are sufficiently detailed.

8.3 The Committee recalls<sup>15</sup> that the burden of proof cannot rest solely on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. 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 transmit to the Committee the information in its possession. In cases where the author has communicated to the State party allegations that are supported by credible testimony and where further clarification depends entirely on information the State party alone possesses, the Committee may consider the allegations substantiated if the State party fails to refute them by providing evidence and satisfactory explanations.

8.4 Concerning the complaint of violation of article 7 of the Covenant, the Committee is aware of the suffering entailed by detention without contact with the outside world for an indefinite period. In this connection, it recalls its general comment No. 20 (44) relating to article 7, in which it recommends States parties to take measures to prohibit incommunicado detention. In these circumstances, the Committee concludes that the apprehension and continued captivity of the author's son, preventing him from communicating with his family and with the outside world, constitute a violation of article 7 of the Covenant.<sup>16</sup> Moreover, the circumstances surrounding the apprehension and continued captivity of Malik Medjnoune and his testimony of May 2000 that he was tortured on several occasions constitute strong grounds for believing that he was subjected to such treatment. The Committee has received no information from the State party that contradicts that belief. The Committee concludes that the treatment to which Malik Medjnoune was subjected constitutes a violation of article 7.<sup>17</sup>

8.5 The information before the Committee shows that Malik Medjnoune was taken away by agents of the State party who were outside his house looking for him. In the absence of adequate explanations from the State party concerning the author's allegations that his son's apprehension and detention were arbitrary or illegal and that he was held incommunicado until 2 May 2000, the Committee finds a violation of article 9, paragraph 1.

8.6 With regard to the alleged violations of article 9, paragraph 2, and article 14, paragraph 3 (a), the Committee recalls that those provisions guarantee that anyone who was arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.<sup>18</sup> The Committee notes that Mr. Medjnoune was arrested on 28 September 1999, a fact not disputed by the State party, and that he was held incommunicado for 218 days, a fact also not disputed by the State party. It also notes counsel's claim that Mr. Medjnoune was not promptly informed of the reasons for his arrest and that the

State party has not refuted this claim. In the absence of any information from the State party showing that the author *was* promptly informed of the reasons for his arrest, the Committee must rely on the author's statement that his son was apprised of the reasons for his arrest only when he appeared before the examining magistrate on 2 May 2000. This delay is incompatible with article 9, paragraph 2, and article 14, paragraph 3 (a), and the Committee finds a violation of these provisions.

8.7 As to the alleged violation of article 9, paragraph 3, the Committee recalls that the right to be brought "promptly" before a judicial authority implies that any delay should be no more than a few days, and that incommunicado detention may in itself constitute a violation of article 9, paragraph 3.<sup>19</sup> It takes note of the testimony of the author's son that he was brought before the prosecutor on 4 and 6 March 2000, and the author's argument that his son was held incommunicado for 218 days until he was brought before the examining magistrate on 2 May 2000, and that he has been awaiting trial for more than six years. In the author's case, and in the absence of satisfactory explanations from the State party or any other justification in the file, the Committee finds that pretrial detention lasting more than five years constitutes a violation of the right under article 9, paragraph 3.

8.8 In the light of the above conclusions, the Committee is not required to consider the author's allegations under article 10 of the Covenant.

8.9 The Committee notes that Mr. Medjnoune is still in detention and is still awaiting trial. It notes that, according to the State party, the judicial investigation into the case was completed on 10 December 2000 and that the hearing was set for 5 May 2001 but subsequently adjourned. Today, nearly seven years after the start of the inquiry and more than five years after the first committal order, the author's son is still in prison and is still waiting to be tried. In respect of the excessive pretrial delay, the Committee recalls that, according to its case law, "in cases involving serious charges such as homicide or murder, and where the accused is denied bail by the court, the accused must be tried in as expeditious a manner as possible".<sup>20</sup> In the case at hand, given that the son was arrested on 28 September 1999 and charged on 2 May 2000 as an accessory to murder, among other things, the Committee believes compelling reasons would have been required to justify nearly six years' detention without trial or sentence. The State party has said that events in the region have made it impossible to try the case in the conditions of calm required for proceedings of this nature. It also informed the Committee on 28 December 2004 that the case should be scheduled for trial in the Tizi-Ouzou criminal court in the very near future. Yet nearly 18 months have passed since then without Mr. Medjnoune being brought to trial. Consequently, the Committee finds a violation of the rights under article 14, paragraph 3 (c).

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations by the State party of articles 7; 9, paragraphs 1, 2 and 3; and 14, paragraph 3 (a) and (c), of the Covenant.

10. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide an effective remedy, which includes bringing Malik Medjnoune immediately before a judge to answer the charges against him or to release him, conducting a full and thorough investigation into the incommunicado detention and treatment suffered by

Malik Medjnoune since 28 September 1999, and initiating criminal proceedings against the persons alleged to be responsible for those violations, in particular the ill-treatment. The State party is also required to provide appropriate compensation to Malik Medjnoune for the violations. In addition, the State party is required to take steps to prevent further occurrences of such violations in the future.

11. Bearing in mind that, by becoming a State 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 and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

#### Notes

<sup>1</sup> Counsel has provided a written statement made by Malik Medjnoune on the occasion of a visit by counsel to his place of detention in May 2000.

<sup>2</sup> Counsel also refers to NGO reports describing the methods of torture commonly used by the Algerian secret police, and to the annual reports of the Special Rapporteur on the question of torture.

<sup>3</sup> According to Malik Medjnoune's statement, he was taken in February 2000 to a hospital near Blida, where he met this person. He spent a month there, until his first appearance before the prosecutor.

<sup>4</sup> Art. 292: "If the arrest or kidnapping is carried out by persons wearing or appearing to wear official uniform or insignia, as specified in article 246 of the Criminal Code, or persons assuming a false identity or using a bogus official order, the penalty shall be life imprisonment. The same penalty shall apply if the arrest or kidnapping is carried out using a motor vehicle or if the victim's life is threatened."

Art. 293: "If the victim of the kidnapping, arrest, detention or false imprisonment is physically tortured, the offenders shall be liable to the death penalty."

Art. 293 bis: "Any person who, using violence, threats or fraud, kidnaps another person or causes another person to be kidnapped, regardless of age, shall be sentenced to between 10 and 20 years' imprisonment. If the victim is physically tortured, the offender shall be liable to the death penalty. Similarly, if the purpose of the kidnapping was to secure payment of a ransom, the offender shall be liable to the death penalty."

<sup>5</sup> Act No. 90-24 of 18 August 1990, art. 51: “If, for the purposes of the inquiry, the investigating officer is obliged to detain one or more of the persons referred to in article 50, he or she shall immediately inform the public prosecutor; police custody shall not exceed 48 hours. Without prejudice to the confidentiality of the inquiry, the investigating officer shall allow the person in custody to make immediate and direct contact with their family by any means and receive visitors. [...] (Order No. 95-10 of 25 February 1995) All time limits set in this article shall be doubled in cases relating to attacks on State security. They may be extended to a maximum of 12 days in cases relating to offences constituting terrorist or subversive acts.”

<sup>6</sup> Act No. 86-05 of 4 March 1986, art. 125: “In other cases than those referred to in article 124, pretrial detention may not exceed four months; if an extension is required, detention may be extended by the examining magistrate, by reasoned order and in accordance with the procedural provisions set forth in a similarly reasoned request from the prosecutor:

- Once where the maximum penalty provided by law is more than three years’ imprisonment;
- Twice in criminal cases.

No extension granted shall exceed a period of four months.”

<sup>7</sup> Act No. 86-05 of 4 March 1986, art. 125 bis: “Where the indictments division decides to extend pretrial detention, such extension may not exceed four months and is not renewable.”

<sup>8</sup> Act No. 86-05 of 4 March 1986, art. 279: “Any case that is ready for trial shall be brought before the court at its next sitting.”

<sup>9</sup> Act No. 82-03 of 13 February 1982, art. 128: “Where a trial court is seized of a case, it is for the court to rule on provisional release; ... prior to committal to the criminal court, and between sittings of the criminal court, such decision rests with the indictments division.”

<sup>10</sup> A copy of the notification of the decision can be found in the file, in Arabic with a translation into French.

<sup>11</sup> A copy of the notification of the decision can be found in the file, in Arabic with a translation into French.

<sup>12</sup> Counsel claims that Algerian law does not comply with international standards and cites the Committee’s comments to the effect that “delays must not exceed a few days” (general comment No. 8, para. 2); in counsel’s view, the lapse of a week between arrest and appearance before a judge is not compatible with article 9, paragraph 3, of the Covenant (communication No. 702/1996, *McLawrence v. Jamaica*, Views adopted on 18 July 1997). Counsel also cites communication No. 44/1979, *Pietravoia v. Uruguay*, Views of 27 March 1981, involving a violation of the same article in respect of a person detained incommunicado for four to six months and then tried by a military court after eight months. Lastly, counsel notes that article 51 of the Algerian Code of Criminal Procedure (Act No. 90-24 of 18 August 1990,

as amended by order No. 95-10 of 25 February 1995), which authorizes the security services to detain persons suspected of terrorist offences for 12 days incommunicado are contrary to the letter of the Covenant and the Committee's case law.

<sup>13</sup> Article 123 (Act No. 90-24 of 18 August 1990): "Preventive detention is an exceptional measure. However, where the constraints provided by judicial supervision are insufficient, preventive detention may be ordered or extended:

1. If it is the only means of preserving material proof or evidence or preventing pressure being exerted on witnesses or victims, or collusion taking place between the accused and their accomplices such as to jeopardize the establishment of the truth;
2. If it is necessary to protect the accused or halt the commission or prevent the recurrence of an infraction;
3. If the accused chooses to evade the obligations arising out of the measures of judicial supervision imposed."

<sup>14</sup> The State party gives no further details.

<sup>15</sup> Communications Nos. 146/1983, *Baboeram Adhin et al. v. Suriname*, Views adopted on 4 April 1985, para. 14.2; 139/1983, *Conteris v. Uruguay*, Views adopted on 17 July 1985, para. 7.2; 202/1986, *Graciela Ato del Avellanal v. Peru*, Views adopted on 31 October 1988, para. 9.2; 30/1978, *Bleier v. Uruguay*, Views adopted on 29 March 1982, para. 13.3; 107/1981, *Elena Quinteros Almeida v. Uruguay*, Views adopted on 21 July 1983, para. 11; 992/2001, *Bousroual v. Algeria*, Views adopted on 30 March 2006, para. 9.4.

<sup>16</sup> Communications Nos. 540/1993, *Celis Laureano v. Peru*, Views adopted on 25 March 1996, para. 8.5; 458/1991, *Mukong v. Cameroon*, Views adopted on 24 July 1994, para. 9.4; 440/1990, *El-Megreisi v. Libyan Arab Jamahiriya*, Views adopted on 23 March 1994, para. 5.

<sup>17</sup> Communications Nos. 449/1991, *Mójica v. Dominican Republic*, Views adopted on 10 August 1994, para. 5.7; 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 9.6.

<sup>18</sup> See general comment No. 13 (21), para. 8.

<sup>19</sup> Communications Nos. 1128/2002, *Rafael Marques de Morais v. Angola*, Views adopted on 29 March 2005, para. 6.3; 992/2001, *Bousroual v. Algeria*, Views adopted on 30 March 2006, para. 9.6. See also general comment No. 8 (16), para. 2.

<sup>20</sup> Communications Nos. 473/1991, *Barroso v. Panama*, Views of 19 July 1995, para. 8.5; 818/1998, *Sextus v. Trinidad and Tobago*, Views of 16 July 2001, para. 7.2.

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