



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Views adopted by the Committee under article 5, paragraph 4, of the Optional Protocol, in respect of Communication No. 2297/2013\* \*\*

<i>Submitted by:</i>	Mejdoub Chani [represented by counsel, William Bourdon, and Action by Christians for the Abolition of Torture-France (ACAT-France)]
<i>Alleged victim:</i>	The author
<i>State party:</i>	Algeria
<i>Date of communication:</i>	15 July 2013 (initial submission)
<i>Document references:</i>	Decision under rules 92 and 97, transmitted to the State party on 30 October 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	11 March 2016
<i>Subject matter:</i>	Torture and arbitrary detention
<i>Procedural issues:</i>	Exhaustion of domestic remedies; lack of substantiation
<i>Substantive issues:</i>	Torture and inhuman or degrading treatment; arbitrary detention; liberty of movement; equality of arms and right to a fair hearing; removal from the protection of the law

\* Adopted by the Committee at its 116th session (7-31 March 2016).

\*\* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. Pursuant to rule 90 of the Committee's rules of procedure, Committee member Lazhari Bouzid did not participate in the consideration of this communication. The text of an individual (concurring) opinion by Olivier de Frouville, Yadh Ben Achour, Mauro Politi and Víctor Manuel Rodríguez-Rescia is appended to the present Views.



<i>Articles of the Covenant:</i>	2 (3), 7, 9, 10, 12 and 14
<i>Articles of the Optional Protocol:</i>	2 and 5 (2 (b))

1. The author of the communication is Mejdoub Chani, born on 5 January 1952 in Ain Sefra, Algeria, who is currently incarcerated in Serkadji prison, Algiers. He claims that he is the victim of violations by Algeria of articles 7, 9, 10, 12 and 14 of the Covenant, read alone or in conjunction with article 2, paragraph 3.<sup>1</sup> He is represented by William Bourdon (Bourdon & Forestier, Paris) and Action by Christians for the Abolition of Torture-France (ACAT-France).

### **Factual background<sup>2</sup>**

2.1 The author is a resident of Luxembourg with dual Algerian and Luxembourg nationality and works as an international consultant and fiduciary adviser. In the course of his professional activities as head of a company named ADC Conseil, he is constantly called upon to provide economic and financial advice.

2.2 The author was stopped by the border police at Algiers airport on 16 September 2009 and questioned about his identity and activities. He was then arrested on 17 September 2009 at his hotel, the El-Djazaïr, by local officers of the Algiers criminal investigation department, which is part of the Intelligence and Security Department (DRS). His family had no news of him for 20 days, during which time he was not heard from.

2.3 Lacking any information concerning the author, who she knew had travelled to Algiers to celebrate Eid, his wife had no alternative but to address an appeal, in vain, to the Consul-General of Algeria in Brussels (who represents that country's interests in Luxembourg).<sup>3</sup> In her letter, she stated that she had had no news of her husband since she had tried to contact him on 24 September 2009. His family would later learn that the author had been formally charged in a criminal matter, thus creating the appearance, a posteriori, of a criminal investigation under ordinary law. He was arrested in connection with the so-called East-West Highway affair, also known as the "corruption scandal of the century", a case that is manifestly political in nature.

2.4 The author was reportedly held incommunicado for 20 days at an unknown location (he would later learn that he had been detained at the premises of the DRS criminal investigation department). In a handwritten account transmitted to his family, he stated that, during those 20 days, he had no opportunity to communicate with family members or with a lawyer and that he had been illegally confined, assaulted and subjected to unbearable physical and psychological pressure. Questioned at all hours of the day and night, he was regularly insulted and struck to make him "confess". The author's interrogators regularly placed his mobile telephone on the table, letting it ring and ring but ensuring that the battery remained charged, thus using the distress of his relatives, who were without news of him and trying constantly to reach him, to pressure him beyond endurance.

2.5 To secure his "confession", the author was also deprived of sleep, making him lose his sense of time. The DRS criminal investigation officers no longer even took the trouble to conceal this ill-treatment, which is clear, inter alia, from the record of the hearing before the investigating judge, which took place between midnight and 4 a.m. on 7 October 2009.<sup>4</sup>

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<sup>1</sup> This claim under article 2, paragraph 3, was added by the author in his comments of 27 March 2014.

<sup>2</sup> This factual background is based on the author's initial communication and subsequent submissions and on the documents annexed thereto.

<sup>3</sup> Letter dated 29 September 2009.

<sup>4</sup> A copy of the record was provided by the author.

The author was also deprived of food and, on his release from incommunicado detention, was found to have lost more than 11 kilograms in 20 days. During each interrogation, he was systematically beaten for hours on end by one or more officers, who punched, slapped, insulted, spat at and kicked him.

2.6 In addition, the author was humiliated. On one occasion, when he naively requested a bucket of water so that he could wash, he was forced to kneel and then surrounded by military security officers who urinated on him to give him a “shower”. The author also describes being ordered to strip and remain naked in full view of everyone and even to go to sleep in that state. He underwent endless interrogations, during which he was always naked and kneeling, with his hands behind his back and his head against the wall.

2.7 On 28 September 2009, as part of the preliminary investigation they were undertaking, the DRS criminal investigation officers obtained a warrant from the public prosecutor at Hussein-Dey Court, which is within the jurisdiction of the Court of Algiers, authorizing them to search the premises of Oriflamme, a company owned by the author. The search was carried out on 4 October 2009 in the presence of the author’s nephew and of another employee, but without the author himself, who was, however, available since he was being held in police custody. During the search, a sum of money was seized, a fact noted down in the record of the search. On the other hand, a computer belonging to the author was also seized but is not referred to among the evidence listed in the criminal case file.

2.8 The author was brought before the public prosecutor at Sidi M’hamed Court on 6 October 2009, then questioned during the night of 6 to 7 October (from midnight until 4 a.m.) by the investigating judge of the ninth chamber of the specialized criminal court, which has its seat in Sidi M’hamed. He was then placed in pretrial detention. He was formally charged with offences linked to the corruption surrounding the construction of the Algerian East-West Highway.

2.9 The author emphasizes that several stages of the criminal proceedings were dispatched in a single day, on 6 October 2009. For example, the report on the preliminary investigation, which was subsequently included in the case file, states that the investigation was opened on 28 September and completed on 6 October 2009. This report was transmitted, on 6 October 2009, to the public prosecutor at Bir Mourad Raïs Court, who relinquished jurisdiction and referred the case on the same day to the public prosecutor at Sidi M’hamed Court. Also on 6 October 2009, the Chief Prosecutor at the Court of Algiers wrote to the public prosecutor at Sidi M’hamed Court instructing him to open a criminal investigation into a number of persons, the author among them, on several charges, including criminal conspiracy, using improper influence, corruption and money-laundering.

2.10 On 6 June 2011, the investigating judge, considering that the criminal investigation into the author and his co-accused in the East-West Highway affair was complete, issued an order closing the investigation and sending the file to the Chief Prosecutor’s Office for submission by the latter to the Indictments Chamber, so that the accused could be committed for trial before the competent criminal court. In July 2011, the Indictments Chamber requested additional information from the investigating judge. On 16 November 2011, the Indictments Chamber handed down its order, committing the accused, including the author, for trial before the criminal court. On 20 November 2011, the author filed an application for judicial review of this order, without, however, having a copy of the order, which was not made available to his lawyers until 30 January 2012.

2.11 The author lodged a complaint of arbitrary detention with the Chief Prosecutor at the Court of Algiers on 31 October 2011, filing an application on the same grounds with the Indictments Chamber on 2 November 2011. The author was informed that his complaint had been rejected by the public prosecutor at Sidi M’hamed Court because the same legal

issues had already been raised before the Indictments Chamber and examined on 16 November 2011.

2.12 On 3 November 2011, with the assistance of counsel, the author lodged a complaint with the Chief Prosecutor at the Court of Algiers claiming that he had been arbitrarily detained and tortured and that his confession had been obtained under duress. On 13 November 2011, the public prosecutor at Sidi M'hamed Court notified the author's lawyers that no further action would be taken on the complaint. This decision was made only 10 days after the complaint had been lodged, without the author's testimony having been taken or any investigation conducted and without the prosecutor having transmitted the complaint to the criminal investigation department for follow-up. Although article 36 of the Code of Criminal Procedure provides that such a decision can always be revoked, so that a remedy is available in theory for any complainant, in practice it is highly unlikely that the decision taken in respect of the author's complaint will be reconsidered. The author's lawyers have nevertheless challenged the decision and contested the admissibility of his confession, obtained under duress, at every stage of the proceedings following the lodging of the complaint with the Chief Prosecutor. They have also raised the issue of the torture to which the author was subjected and challenged the decision taken in respect of his complaint during all the hearings in the East-West Highway affair. These claims have not, however, been referred to in the official judicial decisions. Nor has any investigation ever been carried out into the torture inflicted on the author during the 20 days for which he was held in police custody in connection with this case.

2.13 In 2011, while the author was still being detained pending trial in the aforementioned case, the Algerian judicial authorities initiated proceedings against him for corruption, using improper influence and money-laundering in a second case, the so-called Algérie Télécom or Natixis-Luxembourg affair. On 6 June 2012, the author was convicted in this case and sentenced by the criminal division of Sidi M'hamed Court to 18 years in prison and a fine of 5 million dinars for money-laundering. On 11 December 2012, the Algiers Court of Appeal reviewed the author's penalty, sentencing him to 15 years in prison and a fine of 4 million dinars for money-laundering. On 17 December 2012, the author filed an appeal in cassation with the Supreme Court.<sup>5</sup>

2.14 On 12 October 2012, the author lodged a complaint of torture against persons unknown with the State Prosecutor of Luxembourg pursuant to article 7-3 of the Code of Criminal Procedure, which establishes universal jurisdiction for Luxembourg courts when any foreign national outside the territory of the Grand Duchy is guilty of torturing a Luxembourg national or resident of Luxembourg. The Luxembourg prosecutor's office opened a preliminary investigation, which recently took testimony from relatives of the victim. The author harbours doubts, however, as to the efficacy of this procedure, given that it requires Algeria to cooperate.

2.15 Regarding the exhaustion of domestic remedies, the author emphasizes that he has repeatedly denounced to the prosecutor's office the procedural irregularities in his case and the torture he suffered, in vain. He notes that there are thus no effective remedies available to him, adding that numerous non-governmental sources agree that the Algerian courts offer no guarantees of equitable justice, and are unanimous in denouncing the use of arbitrary detention and the practice of torture by the Algerian intelligence service.

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<sup>5</sup> When the communication was considered by the Committee, the Supreme Court, in January 2015, had overturned the judgment of the Court of Appeal on the grounds that the law had been applied retroactively and that the offences in question were in fact statute-barred. The case was referred back to the Court of Appeal, which, on 22 October 2015, upheld the author's conviction but reduced his sentence to 12 years.

## The complaint

3.1 The author alleges violations of articles 7, 9, 10, 12 and 14 of the Covenant.

### *East-West Highway affair*

3.2 With regard to article 7, the author cites the extraction of his confession under duress and the torture to which he was subjected during his detention in police custody from 17 September to 6 October 2009. The author considers that the treatment he suffered (paras. 2.4-2.7) violated article 7 of the Covenant.

3.3 The author argues that his unlawful detention in itself violated article 9 of the Covenant. He was taken, without explanation, to an unknown location and held incommunicado for 20 days, in breach of his constitutional rights, notably the rights set out in article 48 of the Constitution, since his detention was not subject to judicial review within 48 hours of his arrest and he had no contact with his family. He was never examined by a doctor, contrary to the statements of the investigators, who placed in the case file what the author believes to be a fake medical report. This report appeared miraculously in the file after the author stated, during the hearing before the Indictments Chamber on 29 June 2011, that no medical examination had been conducted at the end of his period in police custody.

3.4 Concerning the handling of the author's detention in police custody, the record of his questioning makes no mention of the duration of the interrogations or the rest breaks between them, nor has the record been signed in the margin to identify the officer conducting the questioning, in violation of article 51 of the Code of Criminal Procedure. In reality, the author was interrogated during uninterrupted periods over days and nights, without a break, rest, sleep, food or water. The author also notes that, while he was held for 20 days, the custody period was not extended after the first 48 hours or subsequently, in violation of article 51 of the Code of Criminal Procedure. When the legal time limit for the initial period of custody expired 48 hours after his arrest, he was not brought before the public prosecutor at Bir Mourad Raïs Court, who was the competent authority at that point and to whom the report on the preliminary investigation was transmitted. Under article 51 of the Code of Criminal Procedure, the extension of the custody period (up to eight days) is permitted only with the written authorization of the prosecutor. In this case, however, no application for an extension was made, or at least no trace of such an application is to be found in the case file. Moreover, the author challenged his continued detention on numerous occasions, before both the investigating judge and the Indictments Chamber of the Court of Algiers, including in a memorandum submitted at the hearing on 29 June 2011, but no action was taken.

3.5 Under Algerian law, the DRS criminal investigation officers should have immediately informed the public prosecutor at the local court of the author's arrest. However, this information was transmitted at the same time as the report on the preliminary investigation, on 6 October 2009. The author's detention in police custody and the preliminary investigation thus took place without any oversight by the prosecutor's office. The author also notes that the officers failed to observe the essential formal requirements in conducting the preliminary investigation and that several stages of the proceedings were disposed of in a single day, on 6 October 2009.

3.6 In addition, the author cites the absence of communication with counsel during his detention in police custody and during the hearing before the investigating judge on 7 October 2009, which is confirmed by the record of the hearing. He was not informed that he had the right to appeal his pretrial detention, contrary to article 123 bis of the Code of Criminal Procedure. It was only because he was able, subsequently, to retain qualified counsel to advise him that he managed to appeal the decision within the legal time limit of three days. There is indeed no mention in the record of the investigating judge's having

conveyed this information. Following the issuance by the investigating judge of the order closing the investigation and sending the file to the Chief Prosecutor's Office for submission to the Indictments Chamber on 6 June 2011, the author, through his lawyers, filed a memorandum with the Indictments Chamber at the hearing on 29 June 2011, in which all of the procedural irregularities, from the time of his arrest until the completion of the criminal investigation 20 months later, were related and duly substantiated. For all of these reasons, the author considers that the State party violated his rights under article 9 of the Covenant.

3.7 The author maintains that the criminal proceedings were fundamentally biased against him. Firstly, in the East-West Highway affair, the constituent elements of the offence of directing a criminal conspiracy, as set out in articles 176 and 177 of the Criminal Code, were not present, and the investigating judge failed to provide any evidence of fraudulent activity by the author, who holds that these breaches run counter to the principle of legality of the punishment and the proceedings.

3.8 The author also claims that his due process rights were violated by the fact that his computer, which was seized at the headquarters of the company he owns in Algeria on 28 September 2009 (see para. 2.7 supra), was not handed over by the criminal investigation officers to the investigating judge until 19 months after the search, that is on 23 May 2011. In violation of the rights of the defence, the investigating judge used data from the computer without informing the author's lawyers, who were only notified thereof on 1 June 2011 during the hearing before that judge. Furthermore, these data were used solely to incriminate the author; the investigating judge did not call the criminal investigation officers to account for the irregularities committed during the search.

3.9 The order by the Indictments Chamber referring the case to the criminal court, which was dated 16 November 2011, was not transmitted to the author's lawyers until 30 January 2012.

3.10 To illustrate the violation of the presumption of innocence in this case, the author cites in particular the investigating judge's transmittal order of 6 June 2011. The order simply reproduced word for word the report on the preliminary investigation, which was, necessarily, unfavourable to the author, without taking into account the arguments presented by the author's lawyers in his favour.

3.11 For all of these reasons, the author considers that he is also the victim of a violation of article 14 of the Covenant.

3.12 Regarding article 12, the author notes that he was deprived of his liberty of movement for 20 days (from 17 September to 6 October 2009) and was unable to contact his relatives.

*Algérie Télécom (Natixis-Luxembourg) affair*

3.13 Furthermore, in connection with the related charges of money-laundering brought against the author under article 389 bis of the Criminal Code (in the second case, known as the Algérie Télécom or Natixis-Luxembourg affair), the investigating judge, on 8 February 2010, addressed a request for international judicial assistance to the Luxembourg judicial authorities, seeking information on the author's accounts and the origins of transactions on those accounts. In support of this request, the judge referred to a note transmitted by the Luxembourg Financial Intelligence Unit to the Algerian Financial Intelligence Processing Unit concerning funds transfers that warranted further scrutiny. The author's lawyers were not informed, however, and the request for judicial assistance was not immediately placed in the case file. They were thus unable to challenge these procedural acts, in violation of the rights of the defence, and the author's accounts in Luxembourg were frozen in consequence. In addition, the author considers that the sending of a second request for judicial assistance

in this case breached international law, since an investigating judge may not use the information transmitted in response to one letter of request to bring a further set of charges against an accused, who is thus subjected to double jeopardy (see also para. 5.16 *infra*).

3.14 By way of remedy, the author requests, *inter alia*, that the State party be required to conduct a thorough and detailed investigation into his incommunicado detention and the treatment to which he was subjected, to bring criminal proceedings against the persons responsible for those violations, in particular his torture, and to compensate him appropriately for the violations suffered.

#### **State party's observations on admissibility and on the merits**

4.1 On 13 January 2014, the State party submitted its observations on admissibility and on the merits. With regard to admissibility, it considers that the author has not exhausted domestic remedies. Pursuant to article 51 of the Code of Criminal Procedure, every detainee must undergo a medical examination on being admitted to a place of deprivation of liberty to ensure that there are no signs of violence on his or her person. Yet the medical report provided by the author with his submission makes no mention of allegations that he had been a victim of torture or violence. Moreover, the author did not make any allegation of torture at his first hearing before the investigating judge. He bore no sign of violence on his person when he was admitted to the place of detention, and, as stated above, every new admission undergoes a medical examination. Concerning the complaint submitted by the author to the public prosecutor, an investigation was conducted, and it was concluded that the complaint was not valid. The author did not appeal that decision.

4.2 Regarding the merits, the State party notes that the author was arrested on 28 September 2009, not on 17 September 2009 as claimed, and that he was brought before the public prosecutor, along with other suspects, on 6 October 2009. His initial detention lasted eight days, as provided for in article 65 of the Code of Criminal Procedure. The police obtained the authorizations necessary to extend the author's detention on three occasions.

4.3 The State party adds that the author is being prosecuted for corruption and money-laundering both in Algeria and abroad. The case is still pending before the Algerian judicial authorities, and no other suspect has made any allegation of torture to the State party authorities, although they are facing the same charges. The State party suspects that the author is using the claims of torture before the Human Rights Committee to influence future judicial decisions that could be taken in his regard. The State party thus considers the communication to be without foundation.

#### **Author's comments on admissibility and on the merits**

##### *East-West Highway affair*

5.1 In a submission dated 27 March 2014, the author reiterated his account of the facts, adding that his arrest and incommunicado detention from 17 September to 6 October 2009 constituted an enforced disappearance. He expressed surprise at the State party's observations, the terseness and brevity of which are not commensurate with the gravity of the facts alleged. The State party has relied entirely on procedural documents that were, in all likelihood, drafted by persons suspected of having taken part in the violations complained of, and it has produced no evidence of any investigation having been conducted to shed light on these allegations. The author cites the Committee's jurisprudence, according to which it is implicit in article 4, paragraph 2, of the Optional Protocol that the State party is required to investigate in good faith all claims that it has violated the Covenant. Furthermore, the Committee may consider all the allegations to be well founded in the absence of satisfactory evidence or explanations to the contrary presented by the

State party.<sup>6</sup> In the present case, the State party has not provided any satisfactory evidence or explanations to refute the serious allegations made by the author.

5.2 The State party maintains, with regard to the allegations of torture, that the author has not exhausted domestic remedies, without, however, explaining what remedy was available against the decision by the prosecutor to take no further action on the complaint lodged by the author on 3 November 2011. The author notes that the decision was taken very quickly, within nine days of the complaint's being lodged. In the author's view, quite apart from the fact that this length of time appears totally inadequate to conduct the inquiries necessitated by the acts complained of, the State party has not even attempted to conceal the lack of any actual investigation. No evidence relating to an investigation has been submitted. Moreover, the procedure followed was flawed, since, in accordance with article 207, second paragraph, of the Code of Criminal Procedure, all acts committed by services of the DRS come under the jurisdiction of the Algiers Indictments Chamber, to which cases are referred by the Chief Prosecutor after consultation with the local military prosecutor.

5.3 Regarding the recourse available, articles 576 and 577 of the Code of Criminal Procedure stipulate that it is for the public prosecutor to transmit complaints to the Chief Prosecutor at the Court of Appeal, who then determines whether proceedings are warranted, in which case the President of the Court orders an investigation to be conducted by an investigating judge. Under Algerian law, a decision to take no further action on a complaint is not subject to appeal.

5.4 Only an impartial inquiry into the circumstances, date, time and place of the author's arrest can determine whether his detention in police custody was properly conducted. The author notes that it was not possible for him to challenge his detention before the investigating judge.

5.5 In addition, in breach of article 40 ter of the Code of Criminal Procedure, under which criminal investigation officers are required to inform the public prosecutor immediately of any arrest, the military security officers carrying out the investigation did not notify the prosecutor, either on 28 September 2009, the date of the author's arrest according to the State party, or on 17 September 2009, the actual date of arrest. This is evident from the author's case file.

5.6 When a person is arrested and placed in police custody, the criminal investigation officers concerned must inform the public prosecutor immediately and submit a report setting out the grounds for holding the person (Code of Criminal Procedure, art. 51). The preliminary investigation file contains no document demonstrating that this requirement was respected. When the custody period has to be extended beyond 48 hours, the officers must present the detained individual to the prosecutor, who questions him or her, then decides whether the detention should be extended. Any extension must be authorized in writing by the competent public prosecutor, as stipulated in article 65 of the Code of Criminal Procedure. In the present case, the first procedural document from the public prosecutor is dated 6 October 2009. Under the Code, however, all written proceedings must be included in the preliminary investigation file.

5.7 In violation of articles 52 and 53 of the Code of Criminal Procedure, the author was not informed of his right to contact his family and was not examined by a doctor at the end of his period in police custody. Furthermore, as stated in the complaint, the record of the hearing before the investigating judge does not mention the duration of the interrogations by the investigators or of the rest breaks between them.

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<sup>6</sup> See, for example, communication No. 1297/2004, *Medjnoue v. Algeria*, Views adopted on 14 July 2006, para. 8.3.

5.8 The author was interviewed for the first time by the investigating judge between midnight and 4 a.m., after 20 days of interrogation. In a state of extreme fatigue and fearing reprisals, he did not dare raise his allegations of torture on that occasion.

5.9 The author considers that he is the victim of an enforced disappearance,<sup>7</sup> as defined in the Declaration on the Protection of All Persons from Enforced Disappearance. The author was arrested on 17 September 2009, yet the State party has provided no explanations in regard to events on that date. There is no indication in the case file of the time and date of the arrest or the authorities that carried it out, and the public prosecutor, who must in any case have known of the author's disappearance through the Algerian Consulate in Brussels (which represents the interests of Algeria in Luxembourg), which had itself been alerted by the author's family, failed to apply to the Indictments Chamber of the Algiers Court of Appeal for information about the author's fate. The family tried numerous times to contact the author on his mobile telephone, but without success.

5.10 With regard to the alleged violation of article 9, the author notes that, according to the State party, the Chief Prosecutor received directly from the criminal investigation officers a report stating that his arrest had taken place on 28 September, not on 17 September 2009 as the author attests; that his detention in police custody had thus lasted eight days; and that the detention had been authorized by the Bir Mourad Raïs prosecutor, as required under article 65 of the Code of Criminal Procedure. However, the case file contains no such report or any evidence that these steps were taken, in breach of articles 68 and 68 bis of the Code of Criminal Procedure. Nor does the file contain, as the author notes, the report setting out the grounds for his detention in police custody or any document from the public prosecutor authorizing the detention or its extension, which renders the author's detention arbitrary, in violation of article 9 of the Covenant.

5.11 Concerning article 7, in addition to submitting a complaint to the Chief Prosecutor on 3 November 2011, the author had already spoken, at his hearing before the investigating judge on 17 November 2009, of the humiliation he had experienced during his period in police custody, "humiliation so extreme that he no longer felt human". He also referred to having been deprived of sleep, denied access to hygiene facilities and refused any contact with the outside world. The author recalls the Committee's jurisprudence, according to which incommunicado detention, without contact with the outside world, constitutes of itself a violation of article 7 of the Covenant.<sup>8</sup> Contrary to the State party's assertions, other persons accused in the East-West Highway affair have claimed to have been victims of torture, including one co-accused in the record of a hearing held on 18 November 2009.<sup>9</sup> This erroneous claim by the State party forms part of a pattern of procedural harassment of the author, which he believes relates directly to the complaint of torture he lodged in 2011.

5.12 Furthermore, to clear itself of the allegations of torture, the State party relies on a medical report drawn up during the author's detention in police custody.<sup>10</sup> However, this document is anonymous and appears to have been drafted by the criminal investigation officers themselves. The author maintains that he was not examined by a doctor, either during his period in police custody or afterwards. In addition, while the medical report bears the DRS letterhead, there is no official seal, and it is thus impossible to know which authority or doctor produced it. The medical examination should have been entrusted to an independent doctor, who could have verified the circumstances of the author's detention.

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<sup>7</sup> The author does not refer to a specific article of the Covenant.

<sup>8</sup> See *Medjnoune v. Algeria*, para. 8.4.

<sup>9</sup> In the record of the hearing of one co-accused, dated 18 November 2009, reference is made to ill-treatment that that individual allegedly suffered while in detention (annex 12 of the initial communication).

<sup>10</sup> Annex 14 of the initial communication.

5.13 The author notes that his situation is not an isolated case and that the State party has been found many times to have violated the Covenant in similar cases. He refers to a number of reports of international non-governmental organizations denouncing cases of enforced disappearance, arbitrary detention or torture.

5.14 The author considers that the failure to respect the rules of judicial procedure since his arrest constitutes a violation not only of article 9 but also of article 14 of the Covenant. The conduct of multiple criminal proceedings against him (three in total) demonstrates that he is being hounded.

5.15 In a submission dated 6 January 2016, the author's counsel added that the trial in the first case, the so-called East-West Highway affair, began on 19 April 2015 and that, on 7 May 2015, the criminal court sitting at the Court of Algiers convicted the author of using improper influence, corruption and money-laundering and sentenced him to 10 years in prison and a fine of 3 million dinars at the end of a trial that the author described as farcical. One of his lawyers asked the court to examine the DRS officers who co-signed the record of the author's confession, as well as the prosecutor and the investigating judge who interviewed the victim after 20 days of arbitrary detention and the doctor who was supposed to have examined him at the end of his period in police custody. The judges refused to hear these witnesses. The author and two of his co-accused did, however, denounce before the court the torture they had suffered at the hands of the DRS, but the judges refused to take account of these allegations. The author's appeal in cassation, filed on 12 May 2015, is pending.<sup>11</sup> In the meantime, the author has staged multiple hunger strikes to protest his arbitrary detention.

*Algérie Télécom (Natixis-Luxembourg) affair*

5.16 This case is characterized by numerous violations of international law, including the speciality rule, the presumption of innocence, the rule of double jeopardy, the principle of the non-retroactivity of more severe criminal law, and the rights of the defence in general (see para. 3.13 supra).

5.17 Furthermore, the so-called Algérie Télécom trial, which resulted in the author's first conviction and his sentencing to 18 years in prison (reduced on appeal to 15 years, then 12), was conducted in record time for a case ending with such a harsh sentence. According to the author's family, his lawyer spoke for just 10 minutes. The prosecutor's summing up lasted for 1 minute and consisted only of a demand for the maximum sentence of 20 years' imprisonment to be imposed. As for the examination of the defence witnesses at the appeal trial, judgment in which was handed down on 11 December 2012, the refusal to hear one key witness offers a further demonstration of the violation of the author's rights under article 14 of the Covenant, the judge having stated that "even if this Ferminé<sup>12</sup> is in court, I will not hear his testimony". The author was thus unable to have his witnesses examined.

5.18 In the case known as the Algérie Télécom or Natixis-Luxembourg affair, the Supreme Court, on 19 January 2015, overturned the appeal judgment of 11 December 2012 on the grounds that the law on money-laundering (an offence that did not exist at the time of the facts alleged, in 2003) had been applied retroactively and that the offences in question were in fact statute-barred. The Supreme Court then referred the case back to the Court of Appeal, which, in the summer of 2015 after several postponements, finally convicted the author and sentenced him to 12 years' imprisonment in its judgment of 22 October 2015. The author has filed an appeal in cassation against this judgment.

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<sup>11</sup> As it is a criminal case, the author has no right of appeal; he can only file an appeal in cassation, that is an appeal on points of law, not on points of fact.

<sup>12</sup> Name of a witness representing the Natixis bank.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

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

6.3 With regard to the requirement to exhaust domestic remedies, the Committee notes that the State party has challenged the admissibility of the communication on the grounds that the author did not raise his claims of torture during his first hearing before the investigating judge on 7 October 2009 and that he did not appeal the decision by the prosecutor to take no further action on his complaint of 3 November 2011. It further notes that, according to the State party, the author is using the individual communication procedure before the Committee to influence the domestic judicial proceedings against him, which are still pending.

6.4 The Committee notes the author's argument that, on account of the state in which he found himself, he was not able to complain of the torture he had suffered or of the conditions in which the first hearing had taken place during the night of 6 to 7 October 2009. The Committee notes that the author did refer to such treatment during the 17 November 2009 hearing before the investigating judge.

6.5 The Committee notes that the author complained of the treatment he had endured not only to the investigating judge on 17 November 2009 but also in a formal written complaint to the Chief Prosecutor, dated 3 November 2011. The Committee notes that the State party indicates only that the public prosecutor's decision to discontinue the proceedings in respect of the complaint 10 days after it had been lodged could have been appealed, without, however, demonstrating how such an appeal could have been submitted under Algerian law. In the absence of additional information from the State party and taking into account the numerous opportunities the State party authorities had to conduct a prompt and impartial investigation into the author's allegations, the Committee considers that it is not precluded, under article 5, paragraph 2 (b), of the Optional Protocol, from considering the author's claims under article 7 of the Covenant, read alone and in conjunction with article 2, paragraph 3.

6.6 The Committee notes the author's allegations under article 9 of the Covenant that his arrest and holding, first in incommunicado detention and then in pretrial detention, were arbitrary. The Committee notes that these allegations were raised with the authorities, first with the investigating judge and then the public prosecutor, but also with the Indictments Chamber and finally the courts, apparently without any investigation having been conducted to this day. The Committee further notes that the arrest took place in connection with the East-West Highway case, judgment in which was handed down on 7 May 2015, a judgment that can be appealed only on points of law and that was reached without a prompt and impartial investigation having been carried out into the allegations of arbitrary arrest. The Committee observes that the State party has not refuted these allegations or offered any explanation for the lack of an investigation. The Committee considers that there has been an unreasonable delay, since, seven years after the facts alleged, no investigation has been conducted into the author's alleged arbitrary arrest and incommunicado detention. The Committee considers that it is not precluded, under article 5, paragraph 2 (b), of the Optional Protocol, from considering the author's claims under article 9 of the Covenant, read alone and in conjunction with article 2, paragraph 3.

6.7 Concerning the author's claims under article 14 of the Covenant, the Committee notes the State party's argument that, since judicial proceedings remain pending, domestic remedies have not been exhausted. The first case, the so-called East-West Highway affair, was adjudicated on the facts by the criminal court on 7 May 2015, but an appeal in cassation is pending. The Committee therefore finds that it is precluded at this stage from considering the claims submitted by the author under article 14 in relation to the East-West Highway affair.

6.8 With regard to the claims made under article 14 in relation to the Algérie Télécom affair, the Committee notes that the author was eventually sentenced by the Court of Appeal to 12 years in prison on 22 October 2015, and that an appeal in cassation has been filed. The Committee therefore finds that it is likewise precluded from considering the claims submitted by the author under article 14 in relation to that case, as required under article 5, paragraph 2 (b), of the Optional Protocol.

6.9 The Committee notes that the allegations made by the author under article 12 of the Covenant have not been sufficiently substantiated. The Committee declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.10 The Committee declares that the communication is admissible insofar as it raises issues under articles 7 and 9 of the Covenant, read alone and in conjunction with article 2, paragraph 3, as well as under article 10, and proceeds to consider the communication on its merits.

#### *Consideration of the merits*

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

7.2 With regard to the merits of the allegations made by the author, the Committee recalls<sup>13</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.

7.3 The Committee has taken note of the author's allegations under article 7 of the Covenant and recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, in which it recommends that States parties should make provision to ban incommunicado detention. It notes that the author was held incommunicado for 20 days, during which time he was kept in isolation and deprived of all contact with his family, a doctor or counsel. The

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<sup>13</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 28 October 1988, para. 9.2; 30/1978, *Bleier v. Uruguay*, Views adopted on 29 March 1982, para. 13.3; 107/1981, *Maria del Carmen Almeida de Quinteros v. Uruguay*, Views adopted on 21 July 1983, para. 11; and 992/2001, *Bousroual v. Algeria*, Views adopted on 30 March 2006, para. 9.4.

Committee further notes the author's claim that he suffered torture during his incommunicado detention from 17 September to 6 October 2009. It notes the allegations that DRS officers subjected the author to five or six interrogations per day, during which he was systematically slapped, kicked, punched, choked and spat at; and that, on several occasions, he was forced to strip by DRS officers, who urinated on him when he asked to take a shower. The Committee notes that the State party has confined itself to denying these allegations on the pretext that only the author made such claims, when in fact the record of the hearing before the investigating judge of one of his co-accused, on 18 November 2009, contains similar allegations. The Committee further notes that, during the proceedings, the author repeatedly denounced the torture to which he had been subjected. Given the failure to investigate these allegations and the absence of any conclusive evidence, other than a medical report that is not sufficient to establish whether the author underwent a thorough medical examination at the end of his period in police custody, and whose probative value has been called into question by the author, the Committee finds that the State party violated article 7 of the Covenant, read alone and in conjunction with article 2, paragraph 3.

7.4 In the light of the above finding of a violation of article 7, the Committee has decided not to consider separately the claims made under article 10 of the Covenant.

7.5 Regarding article 9, the Committee takes note of the author's allegations that he was arrested on 17 September 2009 and held incommunicado, without contact with the outside world, including counsel or his family, and that his detention in an unknown location was not subject to the oversight of the prosecutor's office, a fact attested to by the lack of any procedural document from the public prosecutor prior to 6 October 2009, the date on which the author's period in police custody ended. The Committee notes that, according to the author, the case file contains neither the grounds for his detention in police custody, nor the authorizations from the public prosecutor for the detention and its extension, which demonstrates that the author's arrest and detention were arbitrary. The Committee also notes the State party's failure to investigate the author's alleged arbitrary arrest and incommunicado detention, despite the complaints he lodged. As the State party has not provided any explanation for the absence in the case file of information on the exact date of the author's arrest, the grounds for the arrest and the legality of his detention, and in the absence of any investigation into the allegations, the Committee finds that the State party violated article 9 of the Covenant, read alone and in conjunction with article 2, paragraph 3.

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

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is obliged, *inter alia*, to conduct an effective and complete investigation of the facts, to prosecute and punish the perpetrators, and to provide appropriate measures of satisfaction. The State party is also obliged to take steps to prevent similar violations in future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. In addition, the State party is invited to

make public the Committee's Views and to have them translated into the official language of the State party and widely disseminated.

## Annex

### **Individual (concurring) opinion by Olivier de Frouville, Yadh Ben Achour, Mauro Politi and Víctor Manuel Rodríguez-Rescia**

1. We agree with the Committee's finding that the author's incommunicado detention for 20 days violated articles 7 and 9 of the Covenant, read alone and in conjunction with article 2, paragraph 3. However, for the reasons set out in another individual opinion,<sup>a</sup> we consider that such incommunicado detention removes the person from the protection of the law and constitutes a denial of the right to recognition everywhere as a person before the law, in violation of article 16 of the Covenant.

2. The author did not raise this claim explicitly and the Committee chose not to raise it of its own motion, although it recalled its jurisprudence, which "recognizes the degree of suffering involved in being held indefinitely without contact with the outside world".<sup>b</sup> We note, however, that the author described the treatment that he suffered as an "enforced disappearance" (paras. 5.1 and 5.9). By its very nature, enforced disappearance removes the victim from the protection of the law and denies them their right to recognition everywhere as a person before the law.<sup>c</sup> The claim under article 16 was therefore implicit in the author's argumentation and we consider that the Committee should have raised it of its own motion and found a violation, given the importance of the right in question and its inviolable nature.

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<sup>a</sup> See the individual (partly dissenting) opinion of Olivier de Frouville, Yadh Ben Achour and Mauro Politi appended to the Committee's Views in *Lumbala Tshidika v. Democratic Republic of the Congo*, communication No. 2214/2012, Views adopted on 5 November 2015.

<sup>b</sup> See, for example, the Committee's Views in *Aboufaied v. Libya*, communication No. 1782/2008, Views adopted on 21 March 2012, para. 7.2.

<sup>c</sup> See, for example, the general comment of the Working Group on Enforced or Involuntary Disappearances, which describes enforced disappearance as representing "a paradigmatic violation of the right to be recognized as a person before the law" (A/HRC/19/58/Rev.1, para. 42); article 1, paragraph 2, of the Declaration on the Protection of All Persons from Enforced Disappearance; and article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance. At the regional level, see, for example inter alia, the judgment of the Inter-American Court of Human Rights in *Anzualdo Castro v. Peru*, judgment of 22 September 2009, Series C, No. 202, paras. 90 and 91.