

OPINION No. 40/2006 (ALGERIA)

Communication: addressed to the Government on 18 July 2006.

Concerning: Mr. Abdelmadjid Touati.

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 32/2006.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information in a timely manner.
3. (Same text as paragraph 3 of Opinion No. 32/2006.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. It has transmitted the reply provided by the Government to the source. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. Abdelmadjid Touati, a native of Tiaret, is a mason who at the time of his arrest was working at a construction site in the Bachdjarah district of Algiers. He was arrested with several other persons in Algiers on 18 March 2006 by agents of the intelligence and security service and was reportedly taken to the Ben Aknoun military barracks, which is used by the Algerian intelligence service, the Department of Intelligence and Security (*Département du Renseignement et de la Sécurité*, DRS).

6. It was reported that, a few weeks after his arrest, there was a wave of arrests in the town of Tiaret. Several people were charged with offences under the anti-terrorism legislation and accused of planning to go to Iraq to support several armed organizations operating in that country.

7. Mr. Touati is reportedly being held incommunicado. His family has not been informed of his place of detention and has had no news of him for over five months. The 12-day period of police custody authorized by article 51 of the Code of Criminal Procedure has long since lapsed. According to information from the source, Mr. Touati has still not appeared before an examining magistrate or a representative of the prosecution, and no charges have been filed against him.

8. Fears have been expressed regarding the lengthy period of incommunicado detention, which facilitates the use of torture and in itself constitutes a form of cruel, inhuman and degrading treatment. The fears expressed by the source refer specifically to Mr. Touati's physical and psychological integrity.

9. According to the source, Mr. Touati should have been permitted to contact his family and receive visits. What is more, there has been infringement of his right to the services of a lawyer in order to prepare his full answer and defence.

10. According to the Government's observations: "On 6 April 2006, the judicial police proceeded to arrest a terrorist group of which the person known as Abdelmadjid Touati, alias 'Abou Moutna', was a member. This group included foreign nationals (particularly Tunisians) who were also under investigation for terrorist activities. Considering that the activities of the person known as Abdelmadjid Touati, alias 'Abou Moutna', constitute a breach of the peace under Algerian law, on 18 June 2006 the Ministry of the Interior and Local Communities issued an arrest warrant (*mesure d'assignation*) for him, in accordance with the legislation on the state of emergency."

11. The Government considers that the rules for police custody have been scrupulously observed. In short, the situation of the person known as Abdelmadjid Touati, alias "Abou Moutna", does not constitute arbitrary detention, and his physical integrity has in no way been threatened.

12. The Working Group does not contest the legitimate right of any State to combat terrorism. However, it points out that efforts to combat terrorism must respect human rights and that, in all circumstances, any measure involving deprivation of liberty must be in conformity with the standards of international law. The Security Council and the General Assembly, recognizing the importance of combating terrorism, recall the commitment of States to ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law.²

² Security Council resolutions 1456 (2003) and 1624 (2005) and General Assembly resolutions 57/219, 58/187 and 59/191.

13. In the present case, the Government has not presented any convincing arguments to refute the source's allegations, particularly those that claim that Mr. Touati did not have the benefit of a fair and just trial allowing him to contest the charges brought against him, which implicated him in terrorist activities. The Working Group notes that, in its reply, the Government does not dispute the fact that Mr. Touati has not appeared before a judge and has not been in a position to instruct counsel for his defence. Nor has it disputed the fact that Mr. Touati has been held incommunicado for seven months, without being able to communicate with his family and without his family being informed of his arrest and place of detention.

14. To justify this situation, the Government points out that, on 18 April 2006, the Ministry of the Interior and Local Communities issued an arrest warrant (*mesure d'assignation*) for him in accordance with the legislation on the state of emergency. The Working Group notes that the Government does not specify what it means by *assignation*. If what is meant is "house arrest" (*assignation à résidence*), Mr. Touati is not currently under house arrest, but is being held incommunicado, since his family is unaware of his whereabouts. If he is being held in preventive detention (*détention administrative*), the Government does not specify the legal framework that authorizes such detention and the guarantees that would be applicable. Under international law, any deprivation of liberty is subject to the provisions of article 9 of the International Covenant on Civil and Political Rights, to which Algeria is a party.

15. In its general comment No. 8 (1982) on article 9 of the International Covenant on Civil and Political Rights (right to liberty and security of persons), the Human Rights Committee stipulated that: "Also if so-called preventive detention is used, for reasons of public security, it must be controlled by these same provisions, i.e. it must not be arbitrary, and must be based on grounds and procedures established by law (para. 1), information of the reasons must be given (para. 2) and court control of the detention must be available (para. 4) as well as compensation in the case of a breach (para. 5). And if, in addition, criminal charges are brought in such cases, the full protection of article 9 (2) and (3), as well as article 14, must also be granted."

16. In its reply, the Government refers to the state of emergency in force in Algeria, without specifying whether a legislative measure authorizing the Minister of the Interior to take steps to restrict liberty is in force in Algeria. In any event, and even if such a measure exists, the Working Group considers that deprivation of liberty ordered by an administrative authority without judicial supervision and all the necessary guarantees is not in keeping with the International Covenant on Civil and Political Rights, to which Algeria is a party.

17. The Working Group further recalls that Mr. Touati has been deprived of his liberty because of his presumed participation in an offence and that a number of guarantees and specific rights are therefore applicable to him under international human rights law. Such guarantees are applicable regardless of whether the suspicions against him have been formulated in criminal charges. The Working Group considers that, when "administrative detention" (*internement administratif*) is applied under public safety legislation in order to circumvent judicial guarantees and detain persons suspected of participation in terrorist activities or other crimes, it is also in contravention of the provisions of article 14 of the International Covenant on Civil and Political Rights, to which Algeria is a party.

18. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mr. Touati is arbitrary, being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

19. The Working Group requests the Government of the People's Democratic Republic of Algeria to take the necessary steps to remedy the situation and bring it into conformity with the principles set forth in the International Covenant on Civil and Political Rights.

Adopted on 21 November 2006.