



General Assembly

Distr.: General
26 October 2022
English
Original: French

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fourth session, 29 August–2 September 2022

Opinion No. 45/2022 concerning Mohamed Tadjdid, Malik Riyahi, Soheib Debaghi, Tarek Ahmed Debaghi and Nourredine Khimoud (Algeria)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work,¹ on 9 March 2022 the Working Group transmitted to the Government of Algeria a communication concerning Mohamed Tadjdid, Malik Riyahi, Soheib Debaghi, Tarek Ahmed Debaghi and Nourredine Khimoud. The Government replied to the communication on 6 May 2022. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability,

¹ [A/HRC/36/38](#).



or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Mohamed Tadjdid, born on 9 January 1994, is a national of Algeria who usually resides in Algiers. Malik Riyahi, born on 20 August 1990, is a national of Algeria who usually resides in Ain Temouchent. Soheib Debaghi, born on 20 August 1991, is a national of Algeria who usually resides in Algiers. Tarek Ahmed Debaghi, born on 4 October 1995, is a national of Algeria who usually resides in Algiers. Nourredine Khimoud, born on 5 May 1995, is a national of Algeria who usually resides in Algiers.

5. According to the source, these five men are prominent figures in Hirak, a peaceful pro-democracy movement that began in Algeria on 22 February 2019. The source notes that they have been detained several times in the past for their opinions in the context of this movement.

Arrest and detention

6. The source reports that, on 3 April 2021, a group of people gathered in Emir Abdelkader Street, central Algiers, to organize a peaceful pro-democracy march. The march was violently broken up by law enforcement officers, who then arrested several participants.

7. According to the source, Mohamed Tadjdid and Soheib Debaghi were told that a police officer had sexually abused a minor who had been detained following his participation in the march on 3 April 2021. The minor was released in a state of shock, traumatized by the abuse that he had allegedly endured. Mohamed Tadjdid and Soheib Debaghi filmed the minor relating what had happened to him and shared it on social media, including on Facebook, leading to public outrage and a debate regarding the ill-treatment of detainees at the premises of the various security services. The debate received press coverage both in Algeria and abroad.

8. According to the source, on 4 April 2021, the Algerian police arrested Mohamed Tadjdid and Malik Riyahi at a house in Ain Benian, Algiers. They were neither shown an arrest warrant nor informed of the reasons for their arrest. They were held in police custody from 4 to 8 April 2021.

9. On 5 April 2021, police officers in Batna arrested Nourredine Khimoud, Soheib Debaghi and Tarek Ahmed Debaghi in Barika, Batna *wilaya* (governorate). According to the source, they were neither shown an arrest warrant nor informed of the reasons for their arrest. They were immediately transferred to Algiers and held in police custody from 5 to 8 April 2021.

10. The source reports that the police officers refused to allow the five men to communicate with their lawyers while they were in police custody. They were unable to receive legal assistance or exercise their right to be assisted by a lawyer during questioning.

11. On 5 April 2021, before the five men had been brought before him, the State prosecutor held a press conference to address the sexual abuse to which a minor had allegedly been subjected at the hands of a police officer. The prosecutor announced that the criminal investigation department had opened an inquiry into this allegation and the persons who had been present alongside the minor at the “unauthorized” demonstration. The prosecutor also announced that a social inquiry report on the minor’s living conditions and psychological state was being prepared. According to the prosecutor, the minor had merely been “pushed from behind with an object” (a two-way police radio) and then taken to the police station.

12. At this press conference, the prosecutor stated that the minor had refused an in-depth medical examination while also claiming that the medical examination had not revealed any signs of sexual abuse. In addition, the prosecutor made homophobic accusations against the minor and accused the five men of homosexuality and paedophilia, exploiting the minor for political purposes and using drugs and pornography. These accusations were reported by Government-affiliated media outlets. The prosecutor also noted that the authorities had

opened an inquiry into the five men's supposed involvement in Rachad, an opposition political movement, and their supposed links with "foreign entities" as part of a plot to undermine the stability of the State and rally citizens against the Government. According to the source, this press conference was intended both to exonerate the police officer who had been accused of sexual abuse and to prepare public opinion for the incrimination of those who had publicly reported the abuse.

13. On 8 April 2021, the five men appeared before the State prosecutor of the Sidi M'Hamed court, in Algiers, and were charged with the following crimes and misdemeanours: leading a criminal association (crime); invading a child's privacy and exploiting him or her for immoral purposes (misdemeanour); corruption of a minor aged under 18 years (misdemeanour); possession of narcotics (marijuana) for personal consumption (misdemeanour); and insulting a public body (misdemeanour). The charges were brought under articles 144 bis, 146, 177, 196 bis, 326 and 342 of the Criminal Code, article 12 of Act No. 04-18 of 25 December 2004 on preventing and combating the illicit use and trafficking of narcotic drugs and psychotropic substances and articles 140 and 141 of Act No. 15-12 of 15 July 2015 on the protection of children. The prosecutor also requested the investigating judge to open a judicial inquiry and to place the five men in pretrial detention.

14. That same day, at their first appearance, the five men attended a hearing before the investigating judge of the first division of the Sidi M'Hamed court in Algiers, who ordered their pretrial detention. They were then held at El Harrach prison in Algiers.

15. The five men appealed the decision of the investigating judge to order their pretrial detention before the indictment division of the Algiers Court of Appeal. The source notes that a hearing before the indictment division was scheduled for 25 April 2021. The investigating judge refused to provide a copy of the pretrial detention order to the five men's lawyers. Nor were they provided with a copy by the indictment division on the day of the appeal hearing. The source notes that a defence cannot be prepared without a copy of the investigating judge's order, as it sets out the reasons for the decision to detain a person before trial and allows the defence to challenge these reasons and put forward arguments at the appeal hearing. According to the source, the defence decided to boycott the hearing in protest against the violation of the right of the accused to a defence.

16. The source reports that, on 2 May 2021, one week after the five men's counsel had boycotted the hearing, the indictment division rendered its verdict and upheld the investigating judge's order. The defence, believing the national courts to be lacking in independence and impartiality, did not file a subsequent request with the investigating judge for the five men's release pending trial.

17. On 8 December 2021, the investigating judge of the first division of the Sidi M'Hamed court extended the detention of the five men for a period of four months.

18. On 28 January 2022, the five men began a hunger strike alongside 40 other detainees as a form of peaceful protest against their detention, which they consider arbitrary, and, in particular, against the slow progress of the proceedings and the abusive charges brought against them. Malik Riyahi, Soheib Debaghi, Tarek Ahmed Debaghi and Nourredine Khimoud ended their hunger strike on 10 February 2022 and Mohamed Tadjdid ended his on 22 February 2022.

19. According to the source, on 2 February 2022, the prison management ordered the transfer of the five men to the Bouira prison in retaliation for their hunger strike. During the transfer, the five men tried to protest peacefully, as hunger strikes are recognized under article 64 of the Code on Prison Organization and the Social Rehabilitation of Prisoners. The prison guards responded by striking them with metal objects, leaving Soheib Debaghi needing seven stitches to the head.

20. It is noted that Mohamed Tadjdid, Malik Riyahi and Soheib Debaghi were due to appear before the investigating judge for hearings on the merits on 15 February 2022, with Tarek Ahmed Debaghi's and Nourredine Khimoud's hearings scheduled for 16 February 2022. However, the five men refused to participate in hearings held via video link, asserting their right to be heard in person.

Legal analysis

21. The source alleges that the arrest and detention of the five men is arbitrary and contrary to articles 9 (1), (2) and (4), 14 (1), (2) and (3) (b), 17 and 19 (2) of the Covenant.

22. The source argues that, in reality, the five men were arrested for providing emotional support to the minor who had allegedly been sexually abused in police custody. The source asserts that they were also arrested because of their peaceful pro-democracy activism within the Hirak movement. The source therefore maintains that their arrest and detention is neither reasonable nor necessary and is intended to punish them for defending human rights and democracy in Algeria.

23. The source claims that Mohamed Tadjdid and Soheib Debaghi were the first to reveal the alleged abuse to the public. Malik Riyahi, Nourredine Khimoud and Tarek Ahmed Debaghi were implicated because they were friends with Mohamed Tadjdid and Soheib Debaghi and later shared information about the alleged abuse of the minor publicly on their social media accounts. Accordingly, the source maintains that the arrest and detention of the five men is arbitrary and in breach of articles 9 (1) and 19 of the Covenant.

24. Furthermore, the source states that the five men were neither presented with an arrest warrant at the time of their arrest nor informed of the reasons for their arrest, in violation of article 9 (2) of the Covenant. According to the source, the inability of the five men to obtain access to legal assistance or to communicate with their lawyers during their time in police custody, which exceeded 48 hours, deprived them of their right to challenge the lawfulness of their detention before a judicial authority, in violation of article 9 (4) of the Covenant.

25. In addition, the source claims that the arrest of the five men constitutes an act of retaliation for the support that they provided to an alleged victim of sexual abuse at the hands of a police officer and for their public reporting of this abuse, as well as an infringement of the exercise of their right to free expression. In this regard, the source notes that, in reporting a human rights violation, the five men were peacefully exercising their right to freedom of expression, in particular the right to hold and publish information on human rights, including violations of these rights, under articles 1 and 6 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The arrest and detention of the five men is therefore nothing but an unjustified and disproportionate infringement of their right to free expression on a matter of common interest, which is contrary to article 19 of the Covenant.

26. The source also asserts that the police refused to allow the five men to communicate with their lawyers at any stage during their custody, which lasted from 4 to 8 April 2021 for Mohamed Tadjdid and Malik Riyahi and from 5 to 8 April 2021 for Nourredine Khimoud, Soheib Debaghi and Tarek Ahmed Debaghi, despite a verbal request made to the police officer responsible for their custody. The source therefore concludes that their right under article 14 (3) (b) of the Covenant to communicate with counsel of their choosing was violated.

27. In addition, the source recalls that the investigating judge of the first division of the Sidi M'Hamed court and the indictment division of the Court of Appeal of Algiers both refused to provide the defence with a copy of the detention order. This refusal hampered the defence's ability to challenge the reasons for detaining the five men and put forward arguments in their favour at the hearing held in connection with the appeal against the decision to detain them. The source considers that this failing constitutes a violation of their right to have adequate facilities for the preparation of their defence and their right to a fair hearing by an independent and impartial tribunal under article 14 (1) and (3) (b) of the Covenant.

28. According to the source, the press conference organized by the State prosecutor on 5 April 2021 constitutes a violation of article 17 of the Covenant. In this regard, the source notes that the prosecutor allegedly made homophobic remarks about Soheib Debaghi, arbitrarily interfered in his private life and revealed to the public the content of some of his private discussions on a social media platform, without any legitimate justification.

29. Furthermore, the source argues that this press conference was intended to bring the five men into social disrepute, discredit their accounts of the sexual abuse allegedly endured

by the minor and publicly stigmatize them in the eyes of a conservative society through accusations of homosexual relations and marijuana and alcohol use, before they had even been formally charged and tried. In addition, the source notes that, at the time of the press conference, none of the five men had been formally charged or finally convicted following a fair trial. The source adds that the official charges against them do not include any homosexual acts punishable under Algerian law. The source therefore concludes that the State prosecutor's public statements, which received widespread media coverage and portrayed the five men as guilty, constitute a violation of their right to the presumption of innocence under article 14 (2) of the Covenant.

Response from the Government

30. On 9 March 2022, the Working Group transmitted to the Government a communication concerning Mohamed Tadjdid, Malik Riyahi, Soheib Debaghi, Tarek Ahmed Debaghi and Nourredine Khimoud, requesting it to provide detailed information on them by 9 May 2022 at the latest and to ensure their physical and mental integrity.

31. In its reply, sent on 6 May 2022, the Government asserts that Algeria has not violated any of the rights enshrined in the Covenant and sets out the same chronology of events as summarized by the source, albeit with some clarifications. In particular, the police intervention to break up the march on 3 April 2021 led to the arrest of several demonstrators, including a young man aged 16 years. The State prosecutor was informed that, during a search, the young man had been found to be in possession of a mobile telephone that did not belong to him. He ordered the young man to attend a hearing to address the matter in the presence of one of his legal guardians. A member of the young man's family reported to the police station, having been told by criminal investigation officers that he was there. During a hearing in the presence of a member of his family, the young man confirmed that he regularly participated in unauthorized marches and noted that the mobile telephone seized belonged to one Soheib Debaghi, who had asked him to look after it during the march.

32. According to the Government, once he had been seen by the forensic medical examiner, who concluded in his report that the young man had not been subjected to any physical or sexual violence, the young man was then allowed to leave with his family member. Later that day, in a video streamed live at 10.01 p.m. from a Facebook account in the name of Tadjdid Mohamed,² the young man could be seen crying hysterically, with the same family member, two unidentified persons, and Mohamed Tadjdid and Soheib Debaghi by his side. Mohamed Tadjdid and Soheib Debaghi stated that the young man had been sexually assaulted at the security office of the Sidi M'Hamed administrative district and sought to rally public opinion.

33. In a second video posted from the same account at 11.31 p.m. that day, Soheib Debaghi and Mohamed Tadjdid claimed that the young man had been raped and insulted by police officers. The two men called upon the Algerian people to take to the streets and requested Algerian and foreign lawyers to intervene and organize a gathering in front of United Nations Headquarters. They also slandered and insulted the police officers.

34. In a third video shared on the same site at 8.02 a.m. on 4 April 2021, Mohamed Tadjdid, seemingly in distress, repeated the same accusations and appeals to the Algerian people, urging them to file a complaint with the human rights bodies.

35. That same day, at around noon, the young man appeared alongside a member of his family in another video, which had been filmed in a street in Algiers, stating that he had not been raped but had been pushed from behind with a walkie-talkie.

36. After learning of the facts, the State prosecutor of the Sidi M'Hamed court ordered an inquiry and authorized an electronic search of the telephone seized from the young man, which belonged to Soheib Debaghi. An analysis of the telephone revealed that there was a Facebook account in the name of Soheib Debaghi and that the holder had been in contact with, among other people, a man living in France known for his hostility towards Algeria and

² In the documents received, the name is spelled variously as Tadjadit Mohamed and Tadjadit Mouhmed.

a member of the Rachad movement, which is designated as a terrorist organization under Algerian law. The member of Rachad requested the young man to make a statement in a new video, as the first had been unclear. The authorities also found conversations of a sexual nature between the holder of the account in the name of Soheib Debaghi and the young man, as well as a private group with several members.

37. The Government states that, on 4 April 2021, Mohamed Tadjdid and Malik Riyahi were arrested at a house in Ain Benian as part of the preliminary inquiry. Two pieces of cannabis resin and a joint were found in their possession.

38. During his hearing, Mohamed Tadjdid stated that, after Soheib Debaghi had told him about the young man's arrest by the police, he had gone to several police stations to look for him before eventually finding him and a member of his family in Audin Square in Algiers. It was then that the young man said that he had been sexually assaulted by police officers. This was the context in which Mohamed Tadjdid and Soheib Debaghi filmed the videos mentioned above.

39. As for Malik Riyahi, the search of his mobile telephone authorized by the State prosecutor revealed that he had sent electronic messages to several of his friends asking them to spread the news of the young man's alleged rape to a wide audience. The authorities also discovered that Malik Riyahi was in contact with a person known for posting deceptive videos and false information about the situation in Algeria and a member of the Rachad movement. Malik Riyahi also stated that he had met the young man during the unauthorized march on the same day.

40. Soheib Debaghi admitted that he had appeared in a live stream on Facebook with Mohamed Tadjdid, the young man and a member of the young man's family, in which he had stated that the young man had been raped by police officers, without first having checked whether this was true. Soheib Debaghi also claimed to have met the young man during the unauthorized march and did not deny having exchanged intimate messages with him.

41. According to the Government, the preliminary inquiry and the pretrial investigation revealed that the other suspects had shared the video about the young man's alleged rape and had met him at the unauthorized marches in which they had participated.

42. On 5 April 2021, another member of the young man's family reported to the criminal investigation department, stating that the release of the video had caused him serious emotional distress, that he was filing a complaint against all those who had shared the video and that he was bringing criminal indemnification proceedings to assert the young man's rights.

43. On 8 April 2021, the parties to the case appeared before the State prosecutor of the Sidi M'Hamed court, and Mohamed Tadjdid, Malik Riyahi, Soheib Debaghi, Tarek Ahmed Debaghi and Nouredine Khimoud were prosecuted following a request for an inquiry to be opened for criminal association; dissemination and deliberate promotion, by any means, of false information that could undermine security and public order; invading a child's privacy by publishing and disseminating, by any means, images that may harm him or her; exploiting a child by a means of communication for purposes contrary to public morals or order; corruption of a minor; abduction of a minor; possession of drugs for personal consumption; and insulting a public authority. The applicable provisions were articles 144 bis, 146, 177, 196 bis, 326 and 342 of the Criminal Code, article 12 of Act No. 04-18 on preventing and combating the illicit use and trafficking of narcotic drugs and psychotropic substances and articles 140 and 141 of Act No. 15-12 on the protection of children. On the same day, the investigating judge ordered their pretrial detention.

44. On 29 March 2022, the Sidi M'Hamed court handed down non-suspended prison sentences of 2 years and fines of 20 million Algerian dinars (DA) to Mohamed Tadjdid and Soheib Debaghi and non-suspended prison sentences of 18 months and fines of DA 5 million to Malik Riyahi, Nouredine Khimoud and Tarek Ahmed Debaghi. Following appeals filed by the State prosecutor and the men themselves, a hearing before the appellate court was scheduled for 15 May 2022.

45. The Government notes that police custody is governed by article 51 and subsequent articles of the Code of Criminal Procedure. It states that police custody procedures are fully

compliant with the provisions of articles 44 and 45 of the Constitution and article 9 (2) and (3) of the Covenant. According to the Government, as the placement of the five men in police custody was ordered with judicial oversight and gave rise to criminal proceedings, it was not arbitrary. The Government notes that the judicial authorities have received no complaints of violations of the rights in question, either from the five men or from their lawyers. It adds that the Code of Criminal Procedure does not require the presentation of an arrest warrant at the time of arrest.

46. Moreover, the Government maintains that, as the five men were placed in detention in accordance with the laws in force and in the context of criminal proceedings, their detention is not arbitrary. The authorities have not received any complaints from the five men or their lawyers in this regard. The Government denies allegations that the investigating judge did not inform the five men or their counsel of the pretrial detention order. It notes that, under article 123 of the Code of Criminal Procedure, the investigating judge may inform accused persons orally that they are being placed in pretrial detention and include a note to that effect in the report, such notification being sufficient to enable them to exercise their right to appeal the decision to place them in detention. In the present case, it was mentioned in the report that they had been so notified.

47. In addition, according to the Government, it has not been established that the time limits provided for under Algerian law were not respected in the present case, and no complaint by the five men or their lawyers has been filed in this regard. The Government recalls that Algerian law provides for the right to appear before an impartial judge and to request that the case file be withdrawn from the judge and referred to another one if it can be demonstrated that the first judge breached the duty of impartiality necessary for the proper administration of justice. In the present case, no request for removal or recusal was filed, showing that the five men did not question the integrity or impartiality of the judges before whom they appeared.

48. The Government notes that the Code of Criminal Procedure recognizes the right to choose one's counsel, whether at the investigation or the trial stage. According to the Government, each of the five men implicated was represented by his counsel at the various stages of the legal proceedings.

49. The Government also argues that the right to a public hearing is guaranteed under article 285 of the Code of Criminal Procedure. The Government notes that, in the present case, the five men were tried through public hearings attended by their families and others.

50. Furthermore, the Government notes that the presumption of innocence is guaranteed under the Constitution and national legislation, which place the burden of proof on the State prosecutor and list and define the types of evidence in criminal cases. Similarly, national legislation enshrines the principle of two-tier proceedings and the right to submit a cassational appeal. According to the Government, the source has not established that the five men were deprived of their rights to present arguments in their defence, call witnesses or file an appeal, and the five men all filed appeals. The allegations of judicial bias are unfounded, as the judges complied with all legal procedures, which are fully compliant with the Covenant.

51. The Government notes that, on the orders of the State prosecutor of the Sidi M'Hamed court, a crimes unit of the division that handles offences against the person opened an inquiry into the alleged rape of the young man arrested on 3 April 2021. The inquiry did not reveal any evidence that he had been sexually assaulted: two forensic medical examiners from the forensic department of the Mustapha Pacha teaching hospital in Algiers saw the young man and found no evidence of sexual abuse. On 5 April 2021, a petition was filed with the juvenile judge on the basis of Act No. 15-12 on the protection of children. The judge ordered that the young man should be returned to his guardian and receive follow-up in a non-institutional setting, protection and the necessary assistance for his education and care, with periodic reports to be submitted on his progress.

52. Furthermore, the Government notes that, in order to inform the public and halt the spread of false information, the State prosecutor of the Court of Algiers held a press conference during which he detailed the facts and answered journalists' questions. In accordance with article 11 of the Code of Criminal Procedure, the State prosecutor made

public only objective facts from the proceedings, providing nothing by way of an assessment of the charges against those implicated, and refrained from divulging the names of those concerned.

53. Lastly, the Government notes that, on 28 January 2022, the five men began a hunger strike, in accordance with article 64 of the Code on Prison Organization and the Social Rehabilitation of Prisoners. They later ended their hunger strike. The Government denies allegations that Soheib Debaghi was beaten by prison officers during his transfer to the correctional facility in Bouira. It notes that he could have filed a complaint after having been seen by a forensic medical examiner, who would have provided him with a medical certificate stating that he was not fit to work. However, he did not do so.

54. The Government concludes that it has not violated any of the rights set forth in the Covenant.

Additional comments from the source

55. On 25 May 2022, the source submitted additional comments in response to the Government's reply, reiterating the initial allegations and noting that the Government acknowledges and does not dispute that the five men were arrested and detained. The source categorically rejects the Government's version of events, which it considers to be based on generalities rather than on any direct and detailed evidence, expert report or other document in the case file. The source recalls that the compliance of the proceedings with national law is not sufficient to rebut the allegations of arbitrary detention.³

56. The source maintains that, by sharing the young man's account of what had happened on social media, the five men were peacefully expressing an opinion and protesting.

57. The source disputes the Government's allegations that the five men called for violence after posting the video and reiterates that they were arrested and detained for their peaceful protest on social media, in violation of article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights.

58. The source notes that, with the exception of cases in which a person is caught in flagrante delicto, the presentation of an arrest warrant at the time of arrest is required by article 9 (1) of the Covenant. The source emphasizes that the authorities requested the investigating judge to open a pretrial investigation into the five men and not to initiate the procedure for cases of flagrante delicto. In addition, the source notes that the Government does not contest the allegations that the five men were not informed of the reasons for their arrest when they were arrested, in violation of article 9 (2) of the Covenant.

59. Nor, according to the source, does the Government deny that the five men did not receive assistance from counsel of their choosing at any time during their detention, including immediately after arrest and during their time in police custody, which lasted more than 48 hours, and that they were not informed of their right to receive such assistance.

60. The source adds that the Government does not refute the allegations that the five men were not able to obtain a copy of the pretrial detention order. The source notes that the defence cannot prepare for an appeal before the indictment division without this document. The source stresses that, during a press conference, the State prosecutor revealed to the public the content of private messages exchanged by the five men and found on the telephone, which had been searched without a warrant from a judicial authority, in violation of the right to the presumption of innocence and the right to privacy under articles 14 (2) and 17, respectively, of the Covenant.

Discussion

61. The Working Group thanks the source and the Government for their submissions.

62. As a preliminary matter, the Working Group welcomes the release of four of the men on 7 August 2022, with the fifth, Mr. Riyahi, remaining in detention in connection with separate proceedings. Nevertheless, in accordance with paragraph 17 (a) of its methods of

³ A/HRC/19/57, para. 68.

work, it reserves the right to render an opinion if the persons concerned have been released. The Working Group notes the serious allegations made by the source and therefore decides to render the present opinion.

63. In determining whether the deprivation of liberty of the five men is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.⁴ Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.⁵

64. In the present case, the Working Group takes note of the Government's claims that the proceedings against the five men were fully consistent with Algerian law. Nevertheless, even when detention is carried out in conformity with national legislation, the Working Group must assess whether the application of the legislation was consistent with international human rights law.⁶

65. Furthermore, the Government repeatedly states that the five men have not filed any complaints regarding the violation of their rights. The Working Group would like to emphasize that the rules of procedure governing the handling of communications from sources and replies from Governments are contained in its methods of work and not in any other international instrument that the parties might consider applicable. In this regard, the Working Group would like to clarify that, in its methods of work, there is no rule that precludes the consideration of communications for non-exhaustion of domestic remedies in the country concerned. Sources therefore have no obligation to exhaust domestic remedies before submitting a communication to the Working Group.

Category I

Arrest

66. The source notes, and the Government confirms, that no arrest warrant was presented to the five men at the time of their arrest.

67. According to article 9 (1) of the Covenant, no one may be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. International law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary detention as established under articles 3 and 9, respectively, of the Universal Declaration of Human Rights, article 9 of the Covenant and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁷

68. The Government maintains that the Code of Criminal Procedure does not require the presentation of an arrest warrant and that, if there is reason to suppose that any person has committed an offence that is punishable by a custodial sentence, a criminal investigation officer may arrest him or her as part of the preliminary inquiry, provided that the State prosecutor is informed. However, international law provides for the right to be presented with an arrest warrant, and the Government has not claimed that the detainees were arrested in *flagrante delicto* or pointed to any other exceptional reason to justify their arrest without a warrant.⁸ In the present case, the march held on 3 April 2021 was peaceful and pro-democratic, according to the source, and the Government has not provided the Working Group with information to the contrary. In addition, some of the detainees were arrested and placed in detention one day after the march had begun, and others two days after.

⁴ Ibid.

⁵ Ibid.

⁶ Opinions No. 5/2020, para. 71; No. 65/2020, para. 70; and No. 7/2021, para. 60.

⁷ Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; No. 30/2018, para. 39; and No. 27/2021, para. 34.

⁸ See, for example, opinion No. 3/2018, para. 43.

69. Accordingly, the Working Group considers that the source has provided credible evidence, which has not been rebutted by the Government, that the five men were arrested without an arrest warrant, in violation of article 9 (1) of the Covenant.

70. The source states, and the Government does not deny, that the five men were not given a reason for their arrest at the time of arrest.

71. Article 9 (2) of the Covenant provides that anyone who is arrested must be informed, at the time of arrest, of the reasons for the arrest. An arrest is arbitrary when it is performed without the arrested person being informed of the reasons for the arrest.⁹

72. In the absence of information from the Government to the contrary, the Working Group considers that the five men were not informed of the reasons for their arrest when they were arrested, in violation of article 9 (2) of the Covenant.

73. In addition, according to the source, and as confirmed by the Government, the police held Mohamed Tadjdid and Malik Riyahi in custody from 4 to 8 April 2021 and Nourredine Khimoud, Soheib Debaghi and Tarek Ahmed Debaghi from 5 to 8 April 2021. As the Human Rights Committee has stated, a period of 48 hours is ordinarily sufficient to satisfy the requirement under article 9 (3) of the Covenant of bringing a detainee “promptly” before a judge following his or her arrest; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.¹⁰ In the present case, the five men were not brought before the investigating judge of the first division of the Sidi M’Hamed court in Algiers until 8 April 2021. The Working Group notes that the Government violated its obligation under article 9 (3) of the Covenant by not bringing some of the five men before a judge until three days after their arrest and others until four days after, without justifying this delay.

74. The Working Group therefore finds a violation of article 9 (1)–(3) of the Covenant and concludes that the arrest and detention of the five men was arbitrary under category I.

Pretrial detention

75. The Working Group recalls that, in accordance with article 9 (3) of the Covenant, pretrial detention should be the exception, rather than the rule, and should last for the shortest possible period of time.¹¹ It should be based on an individualized determination that it is reasonable and necessary, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.¹² The courts must consider the appropriateness of imposing alternative measures such as bail.¹³ The Working Group believes that, without such a review, pretrial detention has not been properly instituted and therefore has no legal basis.¹⁴

76. In the present case, the Government has not provided any information on whether the investigating judge took into account the specific circumstances of each of the five men when ordering their pretrial detention. The Government makes no reference to the judge having considered less onerous measures that would have obviated the need for pretrial detention. Consequently, the Working Group considers that the authorities failed to establish a legal basis for the detention of the five men in accordance with article 9 (3) of the Covenant.¹⁵

77. The source alleges, and the Government does not deny, that the first division of the Sidi M’Hamed court and the indictment division of the Court of Appeal of Algiers both refused to provide the defence with a copy of the detention order. According to the source, without this document, the five men were unable to exercise their right to challenge the lawfulness of their detention, as the pretrial detention order sets out the investigating judge’s reasons and allows the defence to challenge these reasons and put forward arguments at the

⁹ Opinions No. 16/2020, para. 60, and No. 46/2020, para. 40.

¹⁰ Human Rights Committee, general comment No. 35 (2014), para. 33.

¹¹ [A/HRC/19/57](#), paras. 48–58; and opinions No. 5/2019, para. 26; No. 62/2019, paras. 27–29; and No. 64/2020, para. 58.

¹² Human Rights Committee, general comment No. 35 (2014), para. 38.

¹³ Ibid.

¹⁴ Opinions No. 68/2019, para. 96; No. 36/2020, para. 51; and No. 15/2022, para. 66.

¹⁵ Opinions No. 36/2020, para. 51; No. 64/2020, para. 58; and No. 31/2022, para. 85.

appeal hearing. The Government maintains that, under national law, the investigating judge may inform the accused orally that he or she has been placed in pretrial detention and include a note to that effect in the report, as was done in the present case. The Working Group reiterates that a complainant challenging a decision has the right to have access to relevant court documents that are necessary for the effective exercise of the right of appeal.¹⁶ It considers that the Government has not demonstrated that sufficient information was provided to the five men to enable them to challenge the lawfulness of their detention, in violation of article 9 (4) of the Covenant.

78. For all these reasons, the Working Group considers that the arrest and detention of the five men lacked a legal basis, in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant. The arrest and detention of the five men was therefore arbitrary under category I.

Category II

79. According to the source, the arrest of the five men constitutes an act of retaliation for the fact that they had provided support to an alleged victim of sexual abuse at the hands of a police officer and had publicly reported that abuse, as well as an infringement of the exercise of their right to freedom of expression. In addition, the source notes that the five men had previously been detained several times in the context of the HIRAK movement. The Government maintains that the detention of the five men was not arbitrary, as the proceedings against them were conducted in accordance with the laws in force and in the context of criminal proceedings.

80. Article 19 (2) of the Covenant guarantees the right to freedom of expression. This right includes political discourse, commentary on public affairs and discussion of human rights and protects all forms of audiovisual expression.¹⁷ It protects the holding and expression of opinions, including those that are critical of, or not in line with, government policy.¹⁸ States parties should not prohibit criticism of institutions, such as the army or the police.¹⁹ It is well established that expression on the Internet is a matter of freedom of expression.²⁰

81. The timeline of events – and the source and the Government agree on the dates and key events – demonstrates that the arrest of the five men was a direct result of the filming and posting of the videos about the alleged victim of sexual assault. The videos were posted on 3 and 4 April 2021, after the young man had allegedly been sexually assaulted by a police officer. Mohamed Tadjdid and Malik Riyahi were arrested on 4 April 2021, and Nourredine Khimoud, Soheib Debaghi and Tarek Ahmed Debaghi the following day. According to the source, Mohamed Tadjdid and Soheib Debaghi were the first to reveal the alleged abuse to the public. Malik Riyahi, Nourredine Khimoud and Tarek Ahmed Debaghi were implicated because they were friends with Mohamed Tadjdid and Soheib Debaghi and later shared information about the alleged abuse of the young man publicly on their social media accounts. The hearings at the preliminary inquiry stage showed that the police officers were primarily interested in the videos that had been shared and their content. Therefore, the Working Group concludes that the arrest and detention of the five men was directly related to the exercise of their right to freedom of expression and their human rights activities.

82. There is nothing to suggest – and the Government has not argued to the contrary – that the restrictions referred to in article 19 (3) of the Covenant apply in the present case. The Working Group is unconvinced that prosecuting the five men was necessary to protect a legitimate interest within the meaning of these provisions or that their detention was proportionate to their activities. Importantly, there is no evidence to suggest that the activities of the five men or the criticisms of the police that they filmed, posted and shared constituted a direct or indirect call for violence or represented a threat to national security or public order,

¹⁶ Human Rights Committee, general comment No. 32 (2007), para. 49. See also opinion No. 6/2021, para. 68.

¹⁷ Human Rights Committee, general comment No. 34 (2011), paras. 11 and 12.

¹⁸ Opinions No. 15/2020, para. 65, and No. 16/2020, para. 68.

¹⁹ Human Rights Committee, general comment No. 34 (2011), para. 38.

²⁰ Ibid., paras. 11 and 12.

health or morals. According to the source, the five men shared the account given by the alleged victim of sexual abuse at the hands of a police officer as a way of affirming their support for him and publicly reporting the abuse.

83. In addition, the Government claims that the five men have links to members of Rachad, which is designated as a terrorist organization under national law. However, the Working Group notes that the Government does not explain how these supposed links either relate to the videos of the young man who had allegedly been sexually abused by the police or justify the arrest or detention of the five men.

84. Moreover, the measures taken against the five men, including the press conference, suggest that they were arrested and detained in retaliation for peacefully exercising their right to freedom of expression.

85. As posting on social networks constitutes an act of freedom of expression on the part of the five men,²¹ the Working Group considers that their arrest and detention is a direct result of the peaceful exercise of their right to freedom of opinion and expression. Accordingly, the arrest and detention of the five men was contrary to article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights and was therefore arbitrary under category II. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

Category III

86. Given its finding that the detention of the five men was arbitrary under category II, the Working Group emphasizes that no trial should have taken place.

Legal assistance of counsel

87. According to the source, the police officers refused to allow the five men to communicate with their lawyers while they were in police custody. They were therefore unable to be assisted by a lawyer during questioning. The Government asserts that each of the five men was represented by his counsel at the various stages of the legal proceedings but does not specifically address the source's allegation regarding the period of police custody.

88. Persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and such access must be provided promptly.²² Access to a lawyer from the outset of detention is an essential safeguard to enable the detainee to challenge the legal basis for the detention.²³

89. Noting that the Government does not address the specific allegation that the five men were unable to obtain legal representation while in police custody and when they were being questioned during this period, the Working Group considers that the five men were deprived of their right to communicate with counsel of their own choosing and to have adequate facilities for the preparation of their defence, in violation of article 14 (3) (b) of the Covenant.

Presumption of innocence

90. According to the source, the State prosecutor's press conference, which received widespread media coverage and portrayed the five men as guilty, constitutes a violation of their right to the presumption of innocence under article 14 (2) of the Covenant, as the prosecutor accused the five men of homosexuality and paedophilia, exploiting the minor for political reasons and using drugs and pornography. The Government notes that, at the press conference, the prosecutor simply detailed the facts and answered the journalists' questions

²¹ See, for example, opinion No. 7/2021, para. 72.

²² United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court ([A/HRC/30/37](#), annex), principle 9 and guideline 8; and [A/HRC/45/16](#), para. 53. See also [CCPR/C/DZA/CO/4](#), para. 36 (d).

²³ [A/HRC/30/37](#), annex, principle 9 and guideline 8, and opinions No. 40/2020, para. 29, and No. 25/2020, para. 41.

objectively, in accordance with the Code of Criminal Procedure, without making any assessment of the charges against those implicated.

91. The Working Group recalls that article 14 (2) of the Covenant and article 11 (1) of the Universal Declaration of Human Rights guarantee the right to the presumption of innocence. It considers that, in these circumstances, where none of the five men had been formally charged or finally convicted at the time of the press conference, the public statements made by the State prosecutor constitute a violation of their right to the presumption of innocence under article 14 (2) of the Covenant and article 11 (1) of the Universal Declaration of Human Rights. In particular, the Working Group notes that the Government does not contest the source's detailed claims that the prosecutor accused the five men of exploiting the minor for political purposes, homosexuality and using drugs and pornography. In so doing, the prosecutor ran the risk of discrediting the five men's accounts of the sexual abuse to which the minor had allegedly been subjected and publicly stigmatizing them in the eyes of Algerian society.

92. The Working Group concludes that the violations of the right of the five men to a fair trial were of such gravity as to give their deprivation of liberty an arbitrary character under category III.

Category V

93. According to the source, the five men were targeted by the authorities for defending human rights and democracy in Algeria. Although the source does not invoke category V in relation to the allegations, the Government has had the opportunity to comment on the facts laid out above.

94. The imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny. The Working Group has recognized the necessity of subjecting interventions against individuals who may qualify as human rights defenders to particularly intense review.²⁴

95. The Working Group considers that there are several indications that the five men were targeted by the authorities for defending human rights. It notes in particular that their arrest occurred immediately after they had expressed opinions in support of an alleged victim of sexual abuse at the hands of a police officer and had reported that abuse publicly.

96. The Working Group also considers that there are some indications that the five men were deprived of their liberty on discriminatory grounds, that is, because of their political or other opinions. It notes in particular the source's uncontested allegation that the five men are prominent figures in Hirak and have been detained several times in the past for their opinions in the context of this movement. The Working Group also notes that the arrest and detention of the five men forms part of a pattern of detentions of persons in connection with their activities within the same movement.²⁵

97. For the above reasons, the Working Group considers that the five men were arrested and detained on discriminatory grounds, that is, because of their political and other opinions and for defending human rights. Their arrest and detention thus violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant and was therefore arbitrary under category V.

98. The Working Group notes that, in its reply, the Government accuses the five men of calling upon the Algerian diaspora to organize demonstrations, gather in front of United Nations Headquarters, file complaints with human rights organizations and lawyers and assert the rights of the young man. It therefore considers that the five men were in effect arrested and detained in retaliation for seeking to bring a case before international human rights protection mechanisms. The Working Group wishes to remind the Government that such retaliatory measures are unacceptable under any circumstances.

²⁴ Opinions No. 21/2011, para. 29, and No. 62/2012, para. 39.

²⁵ Opinion No. 7/2021, para. 72.

99. In the light of this and other findings in the present opinion, the Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders, for appropriate action.

100. The Working Group notes that Mr. Riyahi remains in detention in the context of other proceedings that are not addressed in the present opinion. It notes that the present findings should not be construed as having any effect on these other proceedings.

Concluding remarks

101. The Working Group emphasizes that the present opinion concerns the five men named herein. It does not address the veracity of the claims regarding the alleged sexual abuse of the 16-year-old young man or the alleged impact that posting the claims on social media had on him.

102. The Working Group expresses its grave concern at the source's allegations that the five men were transferred to the Bouira prison in retaliation for their hunger strike and that, during their transfer, prison guards struck them with metal objects, leaving Soheib Debaghi needing seven stitches to the head. The Working Group notes that the Government denies this last allegation and maintains that it has no evidentiary basis and that, if Soheib Debaghi had been assaulted, he could have filed a complaint after being seen by a forensic medical examiner and obtaining a medical certificate.

103. The Working Group considers that there is insufficient evidence in the circumstances to establish that the prison guards hit the five men with objects. Nevertheless, it takes this opportunity to remind the Government of its obligations to refrain from any ill-treatment of detainees and to ensure that all detainees are treated with due respect for the inherent dignity and worth of the human person, in accordance with article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), in particular rules 1 and 36.

104. In addition, the Working Group notes the source's allegations regarding the accusations of homosexual relations and marijuana and alcohol use levelled against the five men by the State prosecutor during the press conference on 5 April 2021 and the public disclosure of the content of some of Soheib Debaghi's private discussions on a social media platform. The Working Group notes that such accusations and disclosures could constitute a violation of the privacy of the five men and that the Government has not explained how such an invasion of their privacy was necessary and justified in the circumstances. Furthermore, it notes that the searches of the telephones of the five men were authorized by the State prosecutor. However, international human rights law requires that such searches be carried out with judicial authorization.²⁶ Although the evidence obtained during these searches constituted only part of the material used against the five men, the Working Group considers that the lack of judicial authorization entailed a risk of a breach of the five men's right to privacy, which could have constituted a violation of article 17 of the Covenant.

Disposition

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

The deprivation of liberty of Mohamed Tadjdid, Malik Riyahi, Soheib Debaghi, Tarek Ahmed Debaghi and Nourredine Khimoud, being in contravention of articles 2, 3, 7, 9, 11 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

106. The Working Group requests the Government of Algeria to take the steps necessary to remedy the situation of the five men without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the Covenant.

²⁶ See, by analogy, [CCPR/C/79/Add.110](#), para. 22.

107. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord the five men an enforceable right to compensation and other reparations, in accordance with international law.

108. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of the five men and to take appropriate measures against those responsible for the violation of their rights.

109. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, for appropriate action.

110. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

111. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether compensation or other reparations have been made to the five men;
- (b) Whether an investigation has been conducted into the violation of the rights of the five men and, if so, the outcome of the investigation;
- (c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Algeria with its international obligations in line with the present opinion;
- (d) Whether any other action has been taken to implement the present opinion.

112. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

113. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

114. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.²⁷

[Adopted on 30 August 2022]

²⁷ Human Rights Council resolution 42/22, paras. 3 and 7.