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Human Rights Council Working Group on Arbitrary Detention

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Opinion No. 58/2023 concerning Azzedine Maache (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 51/8.
2. In accordance with its methods of work,¹ on 24 July 2023, the Working Group transmitted to the Government of Algeria a communication concerning Azzedine Maache. The Government has not replied to the communication. 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, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ [A/HRC/36/38](#).



1. Submissions**(a) Communication from the source**

4. Azzedine Maache, born on 8 May 1973 in Ichmoul, in the *wilaya* (governorate) of Batna, Algeria, is an Amazigh employed by a national airline. He is also a poet and is said to write Tamazight poems with the aim of promoting Amazigh culture.

(i) Context

5. According to the information provided by the source, Mr. Maache is Amazigh and lives in the city of Batna, located in the Aurès, a Tamazight-speaking region in eastern Algeria. The region is inhabited by the Chaouis, an ethnic group belonging to the Amazigh people.

6. According to the source, Mr. Maache is a peaceful activist campaigning for the cultural rights of the region's Amazigh people and for democracy in Algeria. He reportedly participated in all the peaceful pro-democracy demonstrations organized by the Hirak movement from February 2019 onward. This movement is said to have been suppressed in 2020.

(ii) Arrest and detention

7. According to the source, Mr. Maache had already been arrested in 2019 for carrying the Amazigh flag during a peaceful Hirak demonstration. His arrest was said to have been ordered by the former Chief of Staff of the Algerian army, who had ordered the arrest of all individuals carrying the Amazigh flag. Mr. Maache was arrested and brought before the court on charges of undermining territorial unity, of which he was acquitted.

8. The source reports that, on 14 September 2021, Batna city police officers arrested Mr. Maache in his neighbourhood in the city. The officers failed to show him an arrest warrant and to inform him of the reasons for his arrest. The officers, who had a search warrant issued by the public prosecutor attached to Batna court, proceeded to take Mr. Maache to his home, conduct a search thereof and seize his personal belongings, namely an Algerian flag, a flag of the Amazigh people, his telephone and his electronic tablet.

9. The officers then took Mr. Maache to an unknown location, where he was held for nine days. Neither Mr. Maache nor his family was informed of his place of detention. It was later discovered that Mr. Maache had been held in police facilities. According to the source, Mr. Maache was held incommunicado, as he was prohibited from contacting his family or a lawyer for the entire nine-day period that he spent in police custody. The source reports that, during this period, Mr. Maache was not informed of his right to challenge the lawfulness of his detention before a judicial authority.

10. The source indicates that Mr. Maache's time in police custody ended on 22 September 2021. On that day, he was brought before the public prosecutor at Batna court, who verbally notified him of his indictment without a lawyer being present. The prosecutor requested the opening of a judicial investigation based on the following charges: undermining territorial unity, joining a terrorist group, publishing recordings promoting terrorism, publishing false information with the aim of undermining public order and security, creating and managing an online account or page in order to disseminate information likely to incite hatred in society, and contempt of a constituted body, under articles 79, 87 bis 3, 87 bis 5, 144 and 196 bis of the Criminal Code and article 34 of Act No. 20-05 of 28 April 2020 on Preventing and Combating Discrimination and Hate Speech.

11. That same day, Mr. Maache was brought before the investigating judge at Batna court and heard for the first time. No lawyer, not even a State-appointed one, was present. The investigating judge ordered Mr. Maache's release under judicial supervision, but the public prosecutor subsequently appealed that decision.

12. According to the source, on 4 October 2021, the indictments chamber of Batna court of appeal overturned the decision by Batna court to release Mr. Maache and ordered his placement in pretrial detention. Mr. Maache was detained in Tazoult-Lambèse prison, which is located in the Batna region and run by the Ministry of Justice.

13. The source reports that, during Mr. Maache's detention in Tazoult-Lambèse prison, his family was allowed to spend 30 minutes with him in the prison's visiting room once a fortnight.

14. The source indicates that the indictments chamber of the court of appeal referred the case to the criminal court of first instance on 17 April 2022 following the conclusion of the judicial investigation.

15. According to the information received, on 7 July 2022, after a trial lasting several hours, Batna criminal court of first instance sentenced Mr. Maache to 10 years' imprisonment and a fine of 10,000 Algerian dinars and ordered the confiscation of the items seized during the search of his home and the removal of his civic rights for a period of three years. He was found guilty of publishing false information with the aim of undermining public order and security, creating and managing an online account or page in order to disseminate information likely to incite hatred in society, and of contempt of a constituted body. He was acquitted of the charges of undermining territorial unity, joining a terrorist group and disseminating recordings promoting terrorism. The prosecutor is reported to have requested the death penalty during Mr. Maache's trial before the criminal court of first instance.

16. According to the source, Mr. Maache appealed his conviction. On 13 November 2022, the criminal court of appeal acquitted Mr. Maache of four charges – joining a terrorist group, disseminating recordings promoting terrorism, disseminating false information likely to disturb public order, creating and managing an online account or page with the aim of disseminating information likely to incite hatred in society, and contempt of a constituted body – but found him guilty of undermining territorial unity. The criminal court of appeal also upheld the decision to confiscate Mr. Maache's seized belongings and increased the period of time during which he would be deprived of his civic rights to five years. According to the source, the criminal court of appeal reduced Mr. Maache's sentence to 7 years' imprisonment.

17. The source reports that, one week after the verdict, Mr. Maache was transferred to the prison run by the Ministry of Justice in the city of Bordj Bou Arreridj. In this prison, Mr. Maache is able to receive visits from his family for a period of 15 minutes once a fortnight, in contrast to the 30 minutes that he was granted in Tazoult-Lambèse prison.

18. According to the source, Mr. Maache lodged an appeal in cassation with the Supreme Court on 11 January 2023. The Supreme Court has yet to rule on this appeal.

19. The source indicates that Mr. Maache remains in detention at Bordj Bou Arreridj prison.

(iii) *Legal analysis*

20. The source argues that Mr. Maache's detention is arbitrary under categories I, II, III and V of the methods of work of the Working Group.

a. *Category I*

21. The source notes that a detention is arbitrary under category I when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. According to the source, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law that authorizes the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case. This is typically done through an arrest warrant, arrest order or equivalent document.² Furthermore, under article 9 (2) of the Covenant, anyone who is arrested should be informed, at the time of arrest, of the reasons for his or her arrest.³

22. According to the source, Mr. Maache was arrested without being presented with an arrest warrant or another document issued by a judicial authority and was not informed of the reasons for his arrest at the time thereof. The source therefore concludes that there has been a violation of article 9 (1) and (2) of the Covenant.

² Opinion No. 4/2023, para. 64.

³ Ibid.

23. The source also claims that Mr. Maache was held incommunicado in police facilities, as he was prohibited from contacting his family and having access to a lawyer. Mr. Maache was questioned for nine days, from 14 to 22 September 2021, without having the right to challenge the lawfulness of his detention before a judicial authority. The source therefore concludes that there has been a violation of articles 2 (3) and 9 (4) of the Covenant. The source also claims that Mr. Maache was not brought promptly before a judicial authority, and that there was no justification for that delay, in violation of article 9 (3) of the Covenant.

b. Category II

24. The source recalls that a detention is arbitrary under category II when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of expression and freedom of association.

25. The source alleges that Mr. Maache's rights to freedom of expression and freedom of association have been violated. The source states that Mr. Maache was arrested, detained, prosecuted and convicted for peacefully campaigning for the cultural rights of the Amazigh people and for the establishment of a pluralist and democratic political system and that, as part of these activities, he merely expressed peaceful political opinions on social media and during peaceful demonstrations for democracy and the cultural rights of the Amazigh people.

26. The source states that the Criminal Code punishes the exercise of these rights, which are recognized in, inter alia, article 19 of the Universal Declaration of Human Rights and articles 19, 21 and 22 (1) of the Covenant, on freedom of expression, freedom of peaceful assembly and freedom of association. According to the source, the national legal texts on the basis of which Mr. Maache was charged, namely articles 79, 87 bis 3, 87 bis 5, 144 and 196 bis of the Criminal Code and article 34 of Act No. 20-05, are vague, very broad⁴ and imprecise and were adopted and formulated without respect for the principle of lawfulness and, therefore, in violation of article 15 (1) of the Covenant.

c. Category III

27. The source argues that Mr. Maache's detention is arbitrary under category III and recalls that due process is one of the fundamental aspects of the right to a fair trial.

28. The source recalls that the minimum international standards of due process are established in the Covenant, the Universal Declaration of Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). According to the source, the Government has committed numerous violations of Mr. Maache's rights as provided for by these texts.

29. The source states that Mr. Maache had no access to a lawyer, either of his own choosing or appointed by the State, and was not informed of his right to a defence or to remain silent at the time of his arrest or at any point during the period of time he spent in police custody, including when he was being questioned by the police.

30. The source adds that, on the day he appeared before the public prosecutor and during his first appearance before the investigating judge, Mr. Maache received no legal assistance from a lawyer of his own choosing or a lawyer appointed by the State. The source concludes, therefore, that Mr. Maache's rights to have adequate time for the preparation of his defence and to communicate with counsel of his own choosing, which are guaranteed by article 14 (3) (b) of the Covenant, were violated.

31. The source also claims that Mr. Maache was arbitrarily detained because the authorities violated his rights to receive visits from his family and to have medical examinations before, during and after his time in police custody. According to the source, Mr. Maache was held incommunicado, in total isolation from the outside world, and was subjected to severe psychological pressure, forcing him to make confessions to the police

⁴ See communication DZA 12/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26905>.

that were then used in the proceedings against him. Consequently, the source concludes that there has been a violation of article 15 of the Convention Against Torture.

32. In addition, the source alleges that the violation, from the outset of Mr Maache's detention, of his rights to a defence means that he has been denied his right to a fair trial and that the proceedings against him are marred by irregularities.

33. The source notes that the search of Mr. Maache's home and his arrest were ordered by the public prosecutor. However, the source recalls that the public prosecution service is not a judicial authority and was not, therefore, empowered to authorize the search of Mr. Maache's home without first obtaining permission from such an authority. According to the source, this act amounts to arbitrary interference with Mr. Maache's home and privacy, in violation of article 17 of the Covenant and article 12 of the Universal Declaration of Human Rights.

34. The source also points out that the Amazigh flag, taken by police officers during the search, was used as evidence to prosecute and convict Mr. Maache.

d. **Category V**

35. The source claims that Mr. Maache's detention is arbitrary under category V because his arrest and detention are a consequence of his belonging to the Amazigh minority (the Chaouis). According to the source, a detention can be considered arbitrary within the meaning of category V when it is based on ethnic origin or language and aims towards or can result in ignoring the equality of human beings.

36. In the present case, the source claims that Mr. Maache's arrest and detention were motivated by his position as a defender of the cultural rights of the Amazigh people and his active participation in all Amazigh cultural activities in the Tamazight-speaking regions of Algeria. The source concludes that Mr. Maache is therefore being held for discriminatory reasons, in violation of article 26 of the Covenant.

(b) Response from the Government

37. On 24 July 2023, the Working Group transmitted a communication concerning Mr. Maache to the Government, requesting it to provide detailed information about him by 22 September 2023 and to ensure his physical and mental integrity.

38. The Government requested an extension in accordance with paragraph 16 of the Working Group's methods of work, which was granted and lasted until 20 October 2023. The Working Group regrets that, despite the granting of additional time, it has not received a response from the Government.

2. Discussion

39. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

40. In determining whether the deprivation of liberty of Mr. Maache is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established 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.⁵ In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

(a) Category I

41. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without a legal basis.

42. According to the source, Mr. Maache was arrested by the police on 14 September 2021 without being shown a warrant or being informed of the reasons for his arrest. He was

⁵ [A/HRC/19/57](#), para. 68.

not informed of the reasons for his arrest for the first nine days of his detention. In addition, the police officers, who had a search warrant issued by the public prosecutor attached to Batna court, proceeded to conduct a search of Mr Maache's home and seize his personal belongings, such as an Algerian flag, a flag of the Amazigh people, his telephone and his electronic tablet.

43. Under 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. As the Working Group has stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case. This is typically done through an arrest warrant, an arrest order or equivalent document.⁶ Furthermore, article 9 (2) of the Covenant states that anyone who is arrested must be informed, at the time of arrest, of the reasons for his or her arrest and must be promptly informed of any charges against him or her. Respect for these rights is essential for the other rights set out in article 9 of the Covenant, since all individuals must know the reasons for their arrest in order to challenge it effectively and must be brought before a court or magistrate in order to lodge an appeal.

44. Noting the absence of a response from the Government, the Working Group considers credible the source's allegations that Mr. Maache was arrested without being shown a warrant or equivalent document, outside of a situation of *in flagrante delicto*, and that his arrest was thus in breach of articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) of the Covenant and principles 2 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group notes that a search warrant signed by the public prosecutor does not satisfy the requirement to present a valid arrest warrant as detailed above.⁷

45. Furthermore, the Working Group considers that the arresting officers did not, at the time of Mr. Maache's arrest, inform him of the reasons for his arrest and failed to inform him of the charges against him until 22 September 2021. The Working Group therefore finds a violation of article 9 (2) of the Covenant.⁸

46. The source also claims that Mr. Maache did not appear before a judge until 22 September 2021, nine days after his arrest on 14 September 2021. During that period, he was detained and questioned without being given the opportunity to petition a court to rule on the lawfulness of his detention. He was held *incommunicado*, and neither he nor his family was informed of his place of detention.

47. Under article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge must be brought "promptly" before a judge. The Working Group recalls that, according to the Human Rights Committee, longer detention in the custody of law enforcement officials without judicial control unnecessarily increases the risk of ill-treatment and must remain absolutely exceptional and be justified under the circumstances.⁹

48. In the present case, the Working Group notes the absence of any response from the Government that would justify the detention of Mr. Maache for nine days without judicial control. The Working Group therefore finds a violation of article 9 (3) of the Covenant.

49. The Working Group also notes the source's allegations, which are uncontested by the Government, that Mr. Maache was detained in an unknown location from the date of his arrest on 14 September 2021 until his hearing on 22 September 2021 and was prevented from contacting a lawyer and his family. The Working Group recalls that holding persons *incommunicado* violates their right under article 9 (4) of the Covenant to challenge the lawfulness of their detention before a court.¹⁰ The Working Group considers that, by holding Mr. Maache *incommunicado* for nine days after his arrest, the authorities deprived him of the right to challenge the lawfulness of his detention before a court and violated article 9 (4) of the Covenant. Furthermore, in view of the source's allegations, which are uncontested by the

⁶ See, *inter alia*, opinion No. 4/2023, para. 64.

⁷ Opinion No. 63/2022, para. 111.

⁸ Human Rights Committee, general comment No. 35 (2014), para. 30.

⁹ *Ibid.*, para. 33.

¹⁰ See, *inter alia*, opinions No. 45/2017, No. 46/2017, No. 79/2017, No. 11/2018 and No. 35/2018.

Government, that neither Mr. Maache nor his family was informed of his place of detention, the Working Group considers that Mr. Maache was subjected to enforced disappearance, which constitutes a particularly aggravated form of arbitrary detention.¹¹ The Working Group recalls that enforced disappearance violates numerous substantive and procedural provisions of the Covenant, including articles 9 and 14, and is prohibited under international law.

50. In this regard, the Working Group is concerned about the source's allegations, which are unrefuted by the Government, that, once Mr. Maache had appeared before the judge, his family was allowed to visit him for just 30 minutes every two weeks from October 2021 to July 2022. Since then, the duration of the visits has reportedly been reduced to 15 minutes every two weeks. The Working Group recalls that certain conditions of detention (such as denial of access to counsel and family) may result in procedural violations of article 9 (3) and (4) of the Covenant.¹² According to principles 15, 17 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 58 of the Nelson Mandela Rules, communication of detained or imprisoned persons with the outside world, and in particular their families or counsel, should not be denied for more than a matter of days, subject to reasonable conditions. In addition, they may not be denied the right to inform or tell the authorities to inform their families or other persons of their choosing of their arrest. The Working Group urges the Government to ensure that Mr. Maache receives regular family visits of a reasonable duration in order to avoid further violations of his rights.

51. In view of the above findings, the Working Group considers Mr. Maache's detention to have no legal basis, in violation of article 9 of the Covenant and articles 3 and 9 of the Universal Declaration of Human Rights. His detention is therefore arbitrary under category I.

(b) Category II

52. The source asserts that Mr. Maache's detention is arbitrary under category II, since it resulted from his exercising fundamental rights and freedoms protected by international law, including the right to freedom of expression, which is protected by article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights, and the rights to freedom of peaceful assembly and freedom of association, which are protected by articles 21 and 22 of the Covenant and article 20 of the Universal Declaration of Human Rights.

53. According to the source, Mr. Maache was arrested, detained and convicted because of his peaceful involvement in efforts to promote a pluralist democracy and the cultural rights of the Amazigh people.

54. Article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights provide that everyone has the right to freedom of expression. This right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

55. The Working Group notes that Mr. Maache was previously arrested in 2019 and accused of undermining territorial unity by carrying a flag of the Amazigh people. He was subsequently acquitted of those charges. According to the source, Mr. Maache participated in peaceful demonstrations in support of democracy and the Amazigh people and culture. He is also said to be a poet and to write Tamazight poems with the aim of promoting Amazigh culture. The Working Group considers that Mr. Maache's efforts to defend the rights of the Amazigh people, including his participation in peaceful demonstrations, fall within the scope of his right to freedom of expression guaranteed by article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights.

56. Moreover, articles 21 and 22 of the Covenant guarantee the right of peaceful assembly and the right to freedom of association. Article 21 of the Covenant provides that no restrictions may be placed on the exercise of the right of peaceful assembly other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of

¹¹ Human Rights Committee, general comment No. 35 (2014), para. 17. See also opinion No. 37/2021, para. 65.

¹² Human Rights Committee, general comment No. 35 (2014), para. 59.

public health or morals or the protection of the rights and freedoms of others. Article 22 of the Covenant states that everyone must have the right to freedom of association with others, including the right to form and join trade unions for the protection of his or her interests. According to the source, Mr. Maache participated in the peaceful pro-democracy demonstrations organized by the Hirak movement from 2019 onward.

57. The Working Group notes that the Government chose not to refute the source's specific allegations despite being given the opportunity to do so. Although Mr. Maache was charged with terrorism-related crimes, the Government has provided no information to demonstrate that he was arrested for committing violent acts rather than for peacefully exercising his rights.

58. Accordingly, the Working Group concludes that Mr. Maache's detention resulted from the exercise of his rights to freedom of expression, peaceful assembly and freedom of association, in violation of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the Covenant. Mr. Maache's arrest and detention are thus arbitrary under category II.

59. In addition, according to the source, Mr. Maache was accused of joining a terrorist group, on the basis of article 87 bis of the Criminal Code. The Working Group has previously expressed concern about the vague and overly broad wording of this article.¹³ The Working Group is concerned that the definition of terrorism in article 87 bis of the Criminal Code is inconsistent with the definitions proposed by the Security Council and the former holder of the mandate of Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.¹⁴ The imprecise definition of terrorism contained in that article and the negative repercussions that it could have on fundamental rights were also highlighted in 2018 by the Human Rights Committee in its concluding observations on the fourth periodic report of Algeria.¹⁵

60. The Working Group reiterates that the principle of legality enshrined in article 15 of the Covenant requires laws to be formulated with sufficient precision so that individuals can have access to and understand the law and regulate their conduct accordingly. The legal basis for justifying detention must be accessible, understandable, non-retroactive and applied in a consistent and predictable way to everyone equally.¹⁶ The Working Group reiterates that article 87 bis of the Criminal Code defines terrorist offences in overly broad terms, which may, as in the present case, proscribe the peaceful exercise of the rights guaranteed by international law. The Working Group recalls that, in certain circumstances, the laws are so vague and broadly worded that it is impossible to invoke any legal basis justifying the deprivation of liberty.

61. The Working Group refers the case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

(c) Category III

62. Given its finding that the detention of Mr. Maache was arbitrary under category II, the Working Group emphasizes that no trial should have taken place. However, according to the source's allegations, which are uncontested by the Government, Mr. Maache was tried and convicted and is currently serving his sentence after the court of appeal sentenced him to 7 years' imprisonment, upheld the decision to confiscate the items seized during the search of his home and increased the period of time during which he would be deprived of his civic rights to five years.¹⁷ Mr. Maache is now awaiting the Supreme Court's decision after lodging his appeal in cassation on 11 January 2023.

¹³ Opinion No. 15/2022, para. 77.

¹⁴ See communication DZA 12/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26905>.

¹⁵ CCPR/C/DZA/CO/4, paras. 17 and 18.

¹⁶ Opinion No. 4/2023, para. 76.

¹⁷ The Working Group notes that it has no information on the decision made by the court of appeal regarding the fine of 10,000 Algerian dinars imposed by the court of first instance.

63. According to the source, Mr. Maache received no legal assistance after his arrest or during his detention, including when he was being questioned by the police. He was questioned without being informed of his right to legal assistance or his right to remain silent. Furthermore, he was denied his right to a lawyer during his appearance before the public prosecutor and his first appearance before the investigating judge on 22 September 2021, which prevented him from having access to his case file and adequately preparing his defence. The Government has chosen not to refute these allegations despite being given the opportunity to do so.

64. Article 11 (2) of the Universal Declaration of Human Rights, article 14 (2) of the Covenant and principle 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provide that everyone charged with a criminal offence must be presumed innocent until proved guilty according to law at a fair and public trial at which they have had all the guarantees necessary for their defence. Article 14 (3) (b) of the Covenant provides that all individuals charged with a criminal offence must have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. In addition, article 14 (3) (d) guarantees individuals the right to defend themselves in person, to have legal assistance of their own choosing or to have legal assistance assigned to them, and without payment if the individual does not have sufficient means to pay for it. These rights are also protected by principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. It is therefore incumbent upon States to permit and facilitate access to a lawyer, who should, in principle, be of the detained person's choosing, and to do so from the outset of his or her detention.¹⁸

65. In the present case, Mr. Maache was denied access to a lawyer from the time of his arrest until his first appearance before the investigating judge on 22 September 2021, which also took place without his lawyer being present. In the absence of a response from the Government, the Working Group considers that the source has presented credible allegations that demonstrate that Mr. Maache was denied his right to a lawyer following his arrest and during his detention. The Working Group notes in particular that Mr. Maache was unable to meet with his lawyer when he appeared before the public prosecutor and then before the investigating judge. The Government thus denied Mr. Maache his right to prepare his defence with the assistance of a lawyer of his own choosing, in violation of, *inter alia*, article 14 of the Covenant.

66. The source also claims that Mr. Maache was held incommunicado for the first nine days of his detention, during which time he was held in total isolation and subjected to severe psychological pressure, which led him to make confessions to the police. These confessions were then used in the proceedings against him.

67. The Working Group emphasizes that the onus is on the Government to demonstrate that it has not exerted pressure on the detained person and that no improperly obtained evidence was used in the proceedings.¹⁹ The Working Group also stresses that it is absolutely prohibited, under article 14 (3) (g) of the Covenant and article 2 of the Convention against Torture, to which Algeria is a party, to subject a person to torture or ill-treatment to obtain a confession. Any use of evidence obtained through torture is contrary to article 15 of the Convention against Torture, and the Working Group considers that a forced confession mars the entire proceedings, whether or not there is other evidence in support of the verdict.²⁰

68. Noting the absence of a response from the Government, the Working Group considers credible the source's allegations that Mr. Maache was forced into making a statement in which he confessed his guilt and that this statement was subsequently used in the proceedings against him. The Working Group therefore concludes that Mr. Maache's rights not to confess guilt and to a fair trial, guaranteed by article 14 of the Covenant and articles 10 and 11 of the Universal Declaration of Human Rights, have been violated.

¹⁸ Human Rights Committee, general comment No. 35 (2014), paras. 34 and 35.

¹⁹ Opinion No. 79/2022, para. 72.

²⁰ Opinion No. 4/2023, para. 91.

69. The Working Group notes the similarities between the present case and other cases that it has previously examined and refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.²¹

70. Lastly, the source argues that the search of Mr. Maache's home amounts to arbitrary interference with his home and privacy and that the flag of the Amazigh people confiscated during the search was used as evidence in the proceedings against him. Furthermore, according to the source, the fact that the public prosecution service is not a judicial authority means that it was not empowered to authorize the search of a home. The Working Group recalls that it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of national law by the judiciary or other authorities.²² Noting that the source failed to provide sufficient information demonstrating that the search had not been duly authorized and explaining how the seized items were used in the proceedings against Mr. Maache, the Working Group considers that it is not in a position to formulate conclusions in this regard.

71. In the light of all the above, the Working Group concludes that the violations of Mr. Maache's right to a fair trial are of such gravity as to give his detention an arbitrary character under category III.

(d) Category V

72. According to the source, Mr. Maache was targeted because of his political activism and efforts to promote the cultural rights of the Amazigh people. In addition, the source claims that Mr. Maache was arrested and detained because he belongs to an ethnic minority, namely the Amazigh people.

73. The Working Group takes into account a number of non-cumulative factors in order to determine whether a deprivation of liberty is discriminatory in nature. The factors taken into account by the Working Group include: (a) whether the deprivation of liberty is part of a pattern of persecution against the detained person, including, for example, through previous detentions; (b) whether other persons with similarly distinguishing characteristics have also been persecuted; or (c) whether the context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights.²³

74. The source claims, and the Government does not contest, that Mr. Maache had been arrested on a previous occasion in 2019 for carrying the flag of the Amazigh people during a peaceful HIRAK demonstration. His arrest was said to have been ordered by the former Chief of Staff of the Algerian army, who had ordered the arrest of all individuals carrying the Amazigh flag.

75. In this context, and in the absence of any information from the Government that might justify the arrest and detention of Mr. Maache, the Working Group considers that the deprivation of liberty of Mr. Maache is part of a pattern of him being targeted because of his identity and activism. The Working Group also highlights its findings in other cases brought before it in which other activists and members of the Amazigh community had been arbitrarily detained in Algeria, particularly because they belonged to the same ethnic minority as Mr. Maache and because of their political activism.²⁴

76. Consequently, the Working Group finds credible the source's allegations that Mr. Maache was deprived of his liberty on discriminatory grounds, that is, on the basis of his national, ethnic or social origin and the political opinions that he expressed through his participation in demonstrations to promote the rights of the Amazigh people and by displaying and having an Amazigh flag in his home. The Working Group therefore finds a violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. Mr. Maache's deprivation of liberty is thus arbitrary under category V.

²¹ Ibid.

²² See, for example, opinions No. 40/2005, No. 15/2017, No. 16/2017, No. 49/2019 and No. 58/2019.

²³ A/HRC/36/37, para. 48.

²⁴ Opinions No. 34/2017, No. 53/2020, No. 15/2022 and No. 79/2022.

77. The Working Group refers the case to the Special Rapporteur on minority issues.

3. Disposition

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

The deprivation of liberty of Azzedine Maache, being in contravention of articles 2, 3, 7, 9, 10, 11, 19, and 20 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19, 21, 22 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

79. The Working Group requests the Government of Algeria to take the steps necessary to remedy the situation of Mr. Maache 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.

80. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Maache immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

81. The Working Group requests the Government to bring its laws, particularly article 87 bis of the Criminal Code, into conformity with the recommendations made in the present opinion and with the commitments made by Algeria under international human rights law.

82. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Maache and to take appropriate measures against those responsible for the violation of his rights.

83. 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 human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on minority issues, for appropriate action.

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

4. Follow-up procedure

85. 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 Mr. Maache has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Maache;
- (c) Whether an investigation has been conducted into the violation of Mr. Maache's rights and, if so, the outcome of the investigation;
- (d) 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;
- (e) Whether any other action has been taken to implement the present opinion.

86. 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.

87. 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 of any failure to take action.

88. 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.²⁵

[Adopted on 13 November 2023]

²⁵ Human Rights Council resolution 51/8, paras. 6 and 9.