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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION
OF TORTURE AND DETENTION**

Opinions adopted by the Working Group on Arbitrary Detention

The present document contains the opinions adopted by the Working Group on Arbitrary Detention at its thirty-eighth, thirty-ninth and fortieth sessions, held in November/December 2003, May 2004 and September 2004, respectively. A table listing all the opinions adopted by the Working Group and statistical data concerning these opinions are included in the report of the Working Group to the Commission on Human Rights at its sixty-first session (E/CN.4/2005/6).

OPINION No. 17/2004 (UNITED STATES OF AMERICA)

Communication addressed to the Government on 7 May 2004

Concerning: Ansar Mahmood and Sadek Awaed.

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

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group received a communication informing it that 20 named foreigners had been detained in the United States of America in the weeks after 11 September 2001. At the time of the submission of the petition, the source advised that 17 of those persons had already been released. Acting in accordance with its methods of work, the Working Group decided to transmit to the Government only the three cases of persons yet in detention.
3. The Working Group notes with appreciation the information received from the Government in respect of the cases of Mr. Ansar Mahmood, Mr. Sadek Awaed and Mr. Benamar Benatta. (In respect of Mr. Benatta, see opinion No. 18/2004 below.)
4. The Working Group further notes that the Government has informed the Group that Ansar Mahmood and Sadek Awaed were released from detention and deported from the United States on 12 August 2004 and 31 May 2004, respectively.
5. The source confirmed that Ansar Mahmood was released and deported to Pakistan on 12 August 2004 and that Sadek Awaed was released and deported to Egypt in May 2004.
6. Having examined the available information, and without prejudging the nature of the detention, the Working Group decides to file the cases of Ansar Mahmood and Sadek Awaed under the terms of paragraph 17 (a) of its methods of work.

Adopted on 16 September 2004

OPINION No. 18/2004 (UNITED STATES OF AMERICA)

Communication addressed to the Government on 7 May 2004

Concerning: Benamar Benatta

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

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group regrets that the Government did not reply within the 90-day deadline.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments thereon.
5. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.
6. The source informed the Working Group that:
 - (a) Mr. Benatta entered the United States on 31 December 2000 on a non-immigrant visitor's visa, authorizing him to remain in the country until 30 June 2001;
 - (b) Mr. Benatta attempted to enter Canada to request political asylum. He was arrested by Canadian officers and handed over to the United States immigration authorities on 12 September 2001;
 - (c) Mr. Benatta was charged as a removable alien by the Immigration and Naturalization Service and served with a Notice to Appear at Niagara Falls New York, where he was interviewed by agents of the Federal Bureau of Investigation (FBI). He was requested to appear before an immigration court on 25 September 2001. However, on 16 September he was taken by the United States Marshal Service to the Metropolitan Detention Centre in Brooklyn, New York;
 - (d) Mr. Benatta was placed in a "special housing unit" and assigned high-security status. He was kept in incommunicado detention, in a cell illuminated for 24 hours a day. He was denied access to legal counsel and was woken up every half hour by the guard knocking on his door;
 - (e) The FBI officially cleared him of suspected terrorist activity on 15 November 2001. He was never told that he was cleared. On 30 April 2002 he was assigned a lawyer for the first time;

(f) During the months he was detained Mr. Benatta appeared before an immigration judge at the facility, without counsel and without having been provided access to the law library. He was brought to the hearings shackled and handcuffed;

(g) On 12 December 2001 he was criminally indicted for possession of a false social security card and possession of a false and procured United States Alien Registration Receipt Card;

(h) In October 2003 the criminal charges against him were dropped. He remains in immigration detention unable to post a \$25,000 bond. Mr. Benatta is pursuing his claims for asylum as well as seeking a reduction of bond.

7. The Government in reply to the source's allegations, states that:

(a) Benamar Benatta entered the United States under a B-1 non-immigrant visa on 31 December 2000 with an authorization to remain in the United States until 30 June 2001;

(b) Mr. Benatta attempted to enter Canada to request political asylum. Canada denied Mr. Benatta's entry and returned him to the United States on 12 September 2001. At the time of this return Mr. Benatta was found to be in possession of a fraudulent resident alien registration number and a fraudulent Social Security card

(c) On 12 September 2001 Mr. Benatta was served a Notice to Appear and a Notice of Custody Determination. Mr. Benatta was charged as a removable alien having remained in the United States longer than authorized. On 13 September 2001 Mr. Benatta was taken into custody;

(d) On 25 September 2001 Mr. Benatta was scheduled for his initial hearing. During the interval the FBI examined potential connections between Mr. Benatta and the 11 September terrorist attacks, but cleared him of any involvement on 15 November 2001;

(e) On 12 December 2001 Mr. Benatta was ordered to be removed to Canada or Algeria. He filed an appeal with the Board of Immigration Appeals, which rejected it on 8 April 2002;

(f) Also on 12 December 2001, the District Court for the Western District of New York issued an indictment charging Mr. Benatta with a violation of 18 USC 1028 (a) (6) (knowingly possessing an identification document procured without legal authority) and 546 (possession of a fraudulent alien registration card);

(g) Pursuant to a warrant for his arrest, Mr. Benatta was transferred to the custody of United States marshals on 25 April 2002, but on 3 October 2003 the criminal charges against him were dismissed. On 6 October 2003 he was returned to the custody of the United States Immigration and Customs Enforcement;

(h) The immigration judge again ordered Mr. Benatta's removal to Algeria, but he filed an appeal on 22 April 2004;

(i) Mr. Benatta failed to pay the \$25,000 bond set by Immigration and Customs Enforcement as a condition of his release pending the outcome of his appeal.

8. Mr. Benatta's last appeal was rejected on 3 September 2004 and Immigration and Customs Enforcement is in the process of enforcing his departure from the United States.

9. The Working Group considers that:

(a) The versions of events provided by the source and the Government basically correspond as regards the length and handling of Mr. Benatta's detention. Mr. Benatta has in fact been detained for over three years - from 12 September 2001 to the present - in fact for the mere administrative offence of having stayed in the United States after his visa had expired. On 12 December 2001, the District Court for the Western District of New York issued a warrant for Mr. Benatta's arrest, on the basis of possession of fraudulent documentation. Specific charges for that offence were, however, never brought, nor was Mr. Benatta summoned to appear before the trial judge. The accusation proved to be a mere formality, given that when it was dismissed on 3 October 2003, no legal proceedings of any kind had been undertaken. To keep a person in prison awaiting trial for almost three years without actually taking any procedural action on the offence with which he is accused contravenes article 9 of the International Covenant on Civil and Political Rights;

(b) Although both the source and the Government acknowledge that Mr. Benatta was heard by an immigration judge, there is no record of whether the judge ordered or confirmed the detention, since, as the Government has stated, it was Immigration and Customs Enforcement that took the decision to keep Mr. Benatta detained. This deprivation of liberty (from 12 September to 12 December 2001 and from 30 October 2003 to the present) can in no way be justified by the mere fact that Mr. Benatta has been unable to post the \$25,000 bond demanded of him on 22 April 2004. The imprisonment Mr. Benatta has endured, at least for the 14 months from 12 September 2001 to 12 December 2001 and from 30 October 2003 to the present, has been a de facto prison sentence, equivalent to what he might have been given had he committed a crime. In no way can the simple administrative offence of having stayed in the United States after his visa had expired justify such a disproportionate punishment;

(c) Finally, the Government has said nothing about the high-security prison regime (involving impositions that could be described as torture) which, for no reason whatsoever, was imposed on him while he was under investigation by the FBI for a possible link to the 11 September attacks. Neither has the Government explained why Mr. Benatta was not told he was under investigation in that connection, or that he was later cleared of all responsibility for the attacks on the Twin Towers on 11 September 2001. These practices violate article 9 of the International Covenant on Civil and Political Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners. They undoubtedly weakened Mr. Benatta's ability to understand his position and defend himself. Their seriousness is such that Mr. Benatta's imprisonment constitutes arbitrary detention.

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

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

11. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 16 September 2004