

**IN THE SPECIAL IMMIGRATION APPEALS COMMISSION**

SC/12/2005

**IN THE MATTER OF APPEAL AGAINST NOTICE OF DECISION TO MAKE  
A DEPORTATION ORDER**

**BETWEEN**

**‘Y’**

**APPELLANT**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

**PASSAGES FROM ‘Y’ CLOSED JUDGMENT MADE OPEN**

**Part of the Summary of the SSHD’s evidence**

84. Algerian readiness to sign OPCAT in principle, waiting till the necessary systems are in place, is very relevant. There is a “top-down” “green light”. That decision in principle is relevant to any future risk, but is not specific to ‘Y’.

**From the Conclusions**

95. The SSHD’s case at the time of the November statement from Mr Oakden and in subsequent negotiations was that independent monitoring was necessary.

96. We have dealt in open with the significance of the absence of the sort of monitoring regime initially sought and the absence of any now. The absence of signature to OPCAT has two potential resonances. First, a want of satisfaction with that which has thus far been obtained. Second, an unwillingness to adhere to the obligations. We take those in turn.

97. As to the first, the real question of or SIAC is as to the nature and degree of risk which ‘Y’ would now face. As is clear, the passing and implementation of the Ordonnance together with what has been said about its application to ‘Y’, puts a very different complexion on the nature and degree of risk which ‘Y’ was thought to be facing. It was against a real risk of prolonged detention and trial that monitoring which would have been of those in detention, was sought. The need for that monitoring in ‘Y’s case is very much

reduced. The absence of monitoring in respect of risks which, so far as 'Y' is concerned, we do not think really arise, is rather less significant.

98. The reasons monitoring has been refused by Algeria demonstrate to us that it is not a fear of what would be revealed or prevented by monitoring that has motivated the Algerians to adopt the stance they have; nor a desire to inflict or protect those who might inflict such ill-treatment. The assessment of a sensitive, rather prickly state, seeing NGO monitoring, UK monitoring, bilateral monitoring agreements as a public slur on its record (however true in substance), and thus as a public humiliation at the hands of a Western former colonial power which has not been notably friendly or helpful to it in the past is perfectly understandable, and we think correct. It would be seen as public acknowledgement that it could not be trusted to keep its word, needed special treatment, and its sovereignty would be impugned. The Algerian Government is simply not used to the sort of give and take on assurances seen between the UK and USA, although those are usually related to the death penalty rather than interference with custodial or trial arrangements.

99. So the absence of monitoring does not cause us to conclude that what has been said about detention, trial and ill-treatment is unreliable, or said in bad faith. And in 'Y's case the need for monitoring is very significantly reduced.

101. The SSHD and certainly we do not know how significant an issue detention may be in other Algerian deportation cases; he would be understandably more comfortable forensically with any form of monitoring which assisted his response to the obvious argument that the British Government has not obtained what it was seeking in relation to monitoring, or he would be able to use such monitoring and the OPCAT signature as evidence of further Algerian travel in the right direction.

102. The Algerians are clearly willing to sign OPCAT in principle, the decision in principle, has been made. The political direction is reasonably clear and it is all of a piece with the changes taking place in Algeria.

103. We do accept Mr Garnham's submission on OPCAT, that even if signed up to, it is ratification which is required anyway by twenty countries for it to be in force, the international monitoring system is not in force, and the systems necessary for domestic monitoring in Algeria are not ready either.