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UK: Secret judicial proceedings again expose individuals to risk of torture or ill-treatment on return to Algeria

On 2 November the Special Immigration Appeals Commission (SIAC) gave its decision in three important test cases concerning the UK's attempts to deport people to Algeria on "national security" grounds. In all three cases the SIAC re-affirmed its earlier decision that the men could safely and lawfully be returned to Algeria, because it considered that diplomatic assurances obtained by the UK from the Algerian authorities would sufficiently reduce the real risk of serious human rights violations, including torture or other ill-treatment, which the men would face on return.

Amnesty International is deeply disturbed by the SIAC's decision. The organization considers that assurances obtained from Algerian government officials in fact offer no such protection, and are intrinsically unreliable. Furthermore neither the men themselves nor the authorities in the UK have any effective way of enforcing these promises. Such promises are not worth the paper they are written on, particularly since Algeria has repeatedly been found to have breached its binding international legal obligations to prevent torture or other ill-treatment. Amnesty International is therefore gravely concerned that each of these men will be exposed to a real risk of serious human rights violations, including torture or other ill-treatment, if they are returned to Algeria, notwithstanding any assurances given to the contrary.

Amnesty International considers it deeply unfair that decisions that may have a devastating impact on the lives and safety of these men have been taken in secret. The judicial process in the UK, which has sanctioned reliance on such assurances, has denied the men an effective opportunity to challenge the assertion that it would be safe to return them to Algeria. The judicial proceedings against the men, which have involved the use of secret information in secret proceedings, have made a mockery of the right to due process and the principle that justice should not only be done, but be seen to be done. Judicial secrecy over matters of such importance gravely undermines the rule of law.

The three men are Mustapha Taleb, formerly referred to in judicial proceedings as "Y"; a man referred to as "U"; and another man referred to as "BB". Each of the men has consistently denied involvement in terrorism or other activities that may be a risk to "national security".

The SIAC had originally upheld the Secretary of State's assessment both that the men constituted a risk to "national security", and that they could safely be returned to Algeria. It did so, in part, on the basis of material which was kept secret from the men, and from their lawyers. In July 2007 the Court of Appeal upheld the SIAC's finding that it was appropriate for the court to rely on secret material, presented in secret sessions of the court, from which the men and their lawyers were excluded, even when the court was considering the question of whether there were substantial grounds for believing that the men would face a real risk of torture or other ill-treatment upon return to Algeria. The Court of Appeal also upheld – on secret grounds, and based on secret material – the decision of the SIAC to uphold the Secretary of State's assessment that BB constituted a threat to national security; the question of whether the SIAC was right to conclude that the two other men constituted such a threat was not put before the Court of Appeal.

At the same time the Court of Appeal ruled that the SIAC should reconsider the question of whether each of the men would be at risk of grave human rights violations, including torture or other ill-treatment, on return to Algeria. It is these hearings on which the SIAC gave its verdict on 2 November.

In two of the three cases (BB and U), the Court of Appeal kept secret the grounds on which it decided that the SIAC should reconsider its decision that the men would not, if returned, face a real risk of grave human rights violations, including torture or other ill-treatment. The SIAC has now reconsidered these two cases – in part in closed, i.e. secret, session – and has reached the same conclusion. These two men have,

therefore, never been told what problems the Court of Appeal found with the SIAC's original conclusion that they would not face a real risk if returned, and have not now been told how the SIAC, when it reconsidered the question in the light of the concerns raised by the Court of Appeal, justified reaching the same conclusion again. They have at no stage been able to mount an effective challenge to the secret information, considered in secret sessions both of the SIAC and the Court of Appeal, which has been relied on to make the case that they can safely be returned to Algeria.

In the case of the third man, Mustapha Taleb (referred to in the proceedings as Y), the Court of Appeal had found that the SIAC was wrong when it initially concluded, without any evidential basis, that he would benefit from a particular interpretation of Algerian law. The SIAC has now reconsidered his case, and has reached the same conclusion – that Mustapha Taleb would not face a real risk of grave human rights violations, including torture or other ill-treatment, if returned to Algeria.

In its judgment the SIAC conceded that there was “no doubt that he [Mustapha Taleb] will be interrogated by the DRS [Department for Information and Security, *Département du renseignement et de la sécurité* – Algeria's intelligence agency], and little doubt that he will be detained for the maximum period of 12 days garde à vue [that is, without charge, and without access to a lawyer] detention”. The DRS specializes in interrogating people thought to possess information about terrorism-related activities. Such interrogations are often carried out in secret locations. Those detained by the DRS are routinely denied access to the outside world, whether in the form of legal counsel, medical help or visits by families and by the judicial authorities, and are in effect held incommunicado. Amnesty International has received reports that people arrested and detained incommunicado by the DRS have been beaten up and forced to swallow large amounts of chemicals, urine or dirty water.

Despite the many concerns raised about the practices of the DRS, including those raised in Amnesty International reports, the SIAC concluded, “for reasons which are more fully discussed in the closed judgment”, that there were no grounds for finding that Mustapha Taleb would face a real risk of torture or other ill-treatment if returned.

On the very same day that the SIAC reached this conclusion the UN Human Rights Committee raised concerns about reports of cases of torture or inhuman and degrading treatment carried out in Algeria, which would appear to be attributable to the DRS. It also raised specific concerns about the excessive length of garde à vue detention permitted by the Algerian criminal code. The Committee considered the length of detention to be incompatible with international human rights standards, and also raised concern about the fact that detainees are not, under Algerian law, guaranteed access to legal counsel during the period of garde à vue detention. In Amnesty International's experience it is during garde à vue detention that detainees are most at risk of torture or other ill-treatment.

In view of these findings by an independent expert human rights body of the UN that the Algerian government was in violation of binding multilateral human rights commitments, it is hard to believe that informal, unenforceable promises given by diplomats outside the framework of international law could offer any effective protection to Mustapha Taleb, BB or U if they were to be returned to Algeria.

Amnesty International considers that these cases, in addition to being of the utmost importance for the lives and safety of these men, and of others currently facing the same threat, have wider repercussions for the global ban on torture. Returning people to countries where they would face a real risk of torture or other ill-treatment is clearly and absolutely banned under domestic and international law. If the UK government proceeds to deport Mustapha Taleb, BB and U to Algeria, it will not just have circumvented the protection against torture given by the law in the UK, but will have risked diluting the absolute prohibition of torture enshrined in the framework of international law.

Background

Amnesty International has consistently expressed concern that the Algerian military intelligence service, the DRS, routinely detains in secret locations people suspected of any involvement in terrorism. The proceedings in the UK against Mustapha Taleb, BB and U will have heightened any risk that the men would otherwise have faced on return, since the UK Home Secretary's allegation that they have been involved in terrorism-related activity is the basis for the attempts to deport them.

The UK government acknowledges that there is a risk of torture or ill-treatment in Algeria. However, they claim that the assurances given by Algerian government officials are enough to ensure that the UK would not be violating its international obligations by returning these men. Yet not only has Algeria repeatedly been found not to have respected its binding international obligations concerning torture and ill-treatment, but Amnesty International has documented how purported assurances given by Algerian government officials directly to people in similar situations to Mustapha Taleb, BB and U have been

breached.

Two men (Reda Dendani, formerly referred to as “Q”, and a man referred to only as “H”) who have been deported to Algeria already, and who had reportedly been given promises by officials at the Algerian embassy in London before their return that they were not wanted for any crime, and would not be prosecuted when they got back to Algeria, were in fact detained, virtually incommunicado, and then charged. Allegations that they may have been ill-treated have since emerged.

The conditions in which people are detained in Algeria – without any independent mechanism for investigating complaints, and without unimpeded access to lawyers – mean that, once somebody is in custody, it is difficult to ascertain with any certainty whether they may have been ill-treated. Given that there is no effective independent system of investigation and regulation of places of detention in Algeria, Amnesty International considers that the absence of a public complaint or report of torture or ill-treatment in any given individual case or cases should not be taken – as it appears to have been by the SIAC – as evidence that these practices are no longer widespread. Furthermore, in Amnesty International’s experience, former detainees of the DRS are often reluctant to talk about any experience of torture or ill-treatment, for fear of reprisals against them and their families, or re-arrest.

For more information on Amnesty International’s concerns, see *United Kingdom: Deportations to Algeria at all costs*, published on 26 February 2007, AI Index: EUR 45/001/2007, <http://web.amnesty.org/library/Index/ENGEUR450012007>.