

UNITED KINGDOM

Deportations to Algeria at all costs

Amnesty International continues to be profoundly concerned about the United Kingdom (UK) authorities' attempts to deport more than 15 Algerian men to their country of origin at all costs. The organization considers that these attempts are contrary to the prohibition of sending persons to countries where they face a real risk of serious human rights violations, including torture or other ill-treatment.

Some of these men were asylum-seekers in the UK; others had been granted refugee status by the UK authorities. None of them could lawfully be deported to Algeria owing to a real risk that they would be tortured or otherwise ill-treated and/or subjected to other violations of their fundamental human rights upon return to that country. Up until August 2005, the UK authorities themselves recognized that, as a result of that risk, under the UK's domestic and international human rights law obligations, none of these men could lawfully be deported to Algeria. In August 2005 the UK authorities began their attempts to deport them to Algeria.

The UK authorities maintain that these men pose a threat to the "national security" of the UK, and that, therefore, their presence in the country is "not conducive to the public good". They also assert that these deportation attempts are a last resort since they do not have sufficient evidence to bring charges against the men. The UK authorities' claims against these men are based on secret information, including intelligence material, never disclosed to the individuals concerned or their lawyers of choice.

In August 2005, the UK authorities asserted that they would successfully negotiate a framework agreement with their Algerian counterparts for obtaining assurances, known as a Memorandum of Understanding (MoU), with a view to ensuring that deportees' human rights be respected upon return. This MoU, the UK authorities maintained, would allow the UK to deport these men to Algeria safely and lawfully. In the UK authorities' original scheme, their MoU with Algeria would be "enforced" by a complementing monitoring mechanism which would ensure that the human rights guarantees were respected in each case.

At that time, the UK authorities asserted that, but for the successful completion of the MoU with Algeria, none of these men could be lawfully deported to that country.

In August 2005 deportation proceedings began before the Special Immigration Appeals Commission (SIAC) with the men appealing against the deportation orders issued by the UK authorities on "national security" grounds. In November 2005, with no MoU with Algeria in sight, the UK authorities maintained that the only reason for the delay in the successful conclusion of the MoU was that President Bouteflika had unexpectedly been taken ill. However, the UK authorities continued to assert in court that the successful conclusion of the MoU would be announced shortly, and that an appropriate organization would be

identified as the mechanism to monitor the “enforcement” of the MoU. On that basis, the UK authorities requested, and were granted, more time by the court in which to conclude the MoU.

In March 2006, after months of legal wrangling and an inordinate delay, the UK authorities admitted in court proceedings monitored by Amnesty International that the successful conclusion of the MoU with Algeria was still “months away” and asked the court to grant them more time in which to conclude the MoU. However, while this hearing was ongoing, an Algerian official at the Algerian Embassy in London made statements in a television interview to the effect that Algeria would never accept a monitoring mechanism as envisaged by the UK authorities since it considered it contrary to its national sovereignty. That interview was broadcast in court. The judge ruled that the appeals would proceed and rejected the UK authorities’ request for more time.

Shortly afterwards, the UK authorities admitted in court that they had failed to get the MoU with the Algerians. Edward Anthony Oakden, Director of Defence and Strategic Threats in the Foreign and Commonwealth Office and the UK government’s main negotiator with the Algerian authorities and the chief witness on behalf of the UK authorities in the context of the deportation proceedings, admitted in court that several months of diplomatic contacts with the Algerians had failed to result in the successful conclusion of the MoU.

According to the evidence presented by Edward Oakden to the court in April/May 2006, the Algerian authorities had assured their UK counterparts that, once back in Algeria, the deportees would be detained only for a few days before being released. However, during cross-examination, he also admitted that: the Algerians had only provided oral assurances without any written confirmation; that the UK authorities had not requested any; and that the UK authorities had not kept a written record of their discussions with their Algerian counterparts.

Once the judge had rejected their request for an extension for more time to successfully conclude the MoU with the Algerians, in a volte-face, the UK authorities began asserting in court that neither the MoU nor the monitoring mechanism was necessary for the deportations of these men to Algeria to take place lawfully.

Instead, the UK authorities maintained that measures taken by the Algerian authorities with the stated intention of consolidating “national reconciliation” made the need for an MoU and the monitoring mechanism redundant. They referred, in particular, to the Charter for Peace and National Reconciliation, a framework document adopted by national referendum in 2005 in Algeria, and an amnesty law issued under presidential decree on 28 February 2006 to implement the Charter. The amnesty law notably granted exemption from prosecution to members of armed groups who surrendered to the authorities within a six-month period and provided for the release under an amnesty of some 2,200 people who had been charged with or convicted of involvement in terrorist activities.

According to the arguments presented by the UK authorities to SIAC over the course of a number of cases involving Algerian men, the events in Algeria were such that, as far as these deportations were concerned, the UK would be complying with its human rights obligations by simply obtaining assurances from the Algerian authorities on a case-by-case

basis. Accordingly, each man would receive assurances that he would be treated humanely and that, under the terms of the Charter and the amnesty law, he would be granted immunity from prosecution and that, therefore, any proceedings pending against him in Algeria would be extinguished.

The appeals against deportations to Algeria have continued despite the UK authorities' repeated acknowledgment that but for these "assurances" the person concerned would face a real risk of violations of their fundamental human rights.

However, the UK authorities claimed, and SIAC readily believed, that these purported assurances are enough to eliminate that risk. On this basis, for example, on 24 August 2006, SIAC dismissed Mustapha Taleb's appeal against his deportation on "national security" grounds to Algeria. SIAC held that both the Charter and the amnesty law would apply to him, and that, as a result, he would be automatically released from custody in relation to any outstanding charges in Algeria. However, in September 2006, the Algerian authorities informed their UK counterparts that SIAC's interpretation of the amnesty law (and the right to immediate release from custody) was not an interpretation that had been recognized under Algerian law; nor was it the underlying purpose of the particular release provisions upon which SIAC had relied.

Moreover, the amnesty law only applied to people involved in activities within Algeria who presented themselves to the authorities within six months of the issuing of the law, and not to those against whom there were allegations that they were involved in criminal activities abroad, such as "participation in a terrorist network operating abroad". At least one person, alleged to be a co-conspirator of Mustapha Taleb, has returned to Algeria this year. He is now being detained pending a prosecution for a terrorist offence allegedly committed abroad.

The case of Mustapha Taleb

Mustapha Taleb survived torture in Algeria and came to the UK where he was granted refugee status.

Mustapha Taleb, formerly known for legal reasons as "Y", was among those who were charged, tried and eventually acquitted in 2005 of all charges in the UK in connection with an alleged conspiracy to produce poisons and/or explosives and is now facing deportation to Algeria. After his acquittal of all charges, he was released from custody in April 2005, where he had been held since January 2003. He was later re-arrested and held pending deportation to Algeria on "national security" grounds.

Like other Algerian men, Mustapha Taleb appealed to SIAC against being labelled a risk to "national security" by the UK authorities, as well as on the grounds that returning him to Algeria would expose him to a real risk of torture. Amnesty International monitored the open hearings before SIAC of Mustapha Taleb's challenge against his deportation. Despite his previous acquittal on all charges, the UK authorities' case against him during these open hearings, for the most part, consisted of the same allegations that had been made at the criminal trial on charges of alleged conspiracy to produce poisons and/or explosives and

which the jury had clearly disbelieved.

In reaching its decision in Mustapha Taleb's case, SIAC relied on secret intelligence provided by the UK authorities that was withheld from him, his lawyers of choice and the public. The SIAC proceedings were profoundly unfair, denying Mustapha Taleb the right to a fair hearing and making it impossible for him to effectively refute the UK authorities' case that he was a "national security" risk.

SIAC also failed to recognize the real risk of torture that Mustapha Taleb faces if he is deported to Algeria. If returned, he is likely to be taken into the custody of Algeria's intelligence agency known as the Department for Information and Security (*Département du renseignement et de la sécurité*, DRS), the authority specialized in such cases. It specializes in interrogating people thought to possess information about terrorist activities, and is widely known to practise torture or other ill-treatment. The risk of torture faced by individuals who are arrested by the DRS has been extensively documented by Amnesty International.

Three of the jurors who had acquitted Mustapha Taleb in the criminal proceedings expressed their shock that despite his acquittal at the criminal trial, the exact same evidence was being used again in the open proceedings before SIAC to "justify his deportation". The jurors wrote to Amnesty International:

As three ordinary members of the public we have had our eyes opened to such an unfair and unjust sequence of events orchestrated by the authorities that we feel compelled to speak out. This is contrary to anything we thought could be possible in a democratic, free society. Since January 2003, "Y" [Mustapha Taleb] has been persecuted by our government beyond all realms of imagination. We were three jurors on "Y"'s criminal trial (the 'no-ricin trial') and after seven months listening carefully to the evidence and arguments from the prosecution and defence, we, as a jury, acquitted him of all charges and expected that, on his release, he could begin to rebuild his life in this country.

Notably, all of these Algerian men have been labelled by the UK authorities as "suspected international terrorists" and "threats to the national security" of the UK. In addition, all the open judgments by SIAC concerning these men are a matter of public record, and, therefore, fully available to the Algerian authorities. Furthermore, Amnesty International believes the UK authorities would have passed to their Algerian counterparts the secret information, including the intelligence material, on the basis of which they had purportedly formed their suspicions against the men.

Therefore, Amnesty International considers it inescapable that the same rationale for excluding Mustapha Taleb from the benefit of the amnesty law could apply to all of them.

Two other Algerian men who were deported from the UK to Algeria in January 2007 are currently imprisoned and facing charges, reportedly in connection with "participation in a terrorist network operating abroad". According to the purported assurances received in their cases, they had previously understood that prosecutions were wholly discounted.

The deportations of “H” and Reda Dendani

An Algerian man in his mid-30s, known for legal reasons only as “H”, was deported from the UK to Algeria on 26 January 2007. Amnesty International has been informed that, immediately before his deportation, “H”, together with other Algerian men, had attended the Algerian Embassy in London where each signed documents on the understanding that they would benefit from the amnesty measures once they were back in Algeria. At that time, “H” and the others were assured, as they had been on other occasions by Algerian officials, that they were not wanted in Algeria and that they would likely spend at best a few days in detention as customary in deportation cases.

Upon arrival in Algeria, Amnesty International understands that “H” was met by an official from the British Consulate and that, possibly as a result of the presence of this official, “H” was not detained by the DRS. However, he was later contacted and asked to report to the DRS in Algiers. He did so as requested on 30 January 2007. At that point, “H” was taken into DRS detention where he remained incommunicado for approximately 12 days, until the weekend of 10 and 11 February, when he was allowed to phone his brother. He informed his brother that he would be appearing before a court. Eventually, he was allowed to see a lawyer for the first time on 17 February. On that day, he also appeared before a judge for a second time, this time represented by a lawyer. However, on his first appearance before a court, one week before on 10 February, he was not legally represented. Thus, it was only possible on 17 February to discover where “H” was being held and what was happening to him. On that day, he was also allowed to see his family for the first time. His mother and father visited him in Serkadji Prison in Algiers.

Amnesty International has also been informed that “H” did not understand why he was being held. Reportedly, his lawyer too is unaware of the reasons for his detention. “H”’s beard had been shaved off when he went into prison. He did not report that he had been tortured himself, but he did report that he was held in a place where he could hear other people’s cries and screams of pain. His family and lawyer have reported that he was extremely distressed at having believed the assurances that he would not be prosecuted. Amnesty International further understands that while he was held by the DRS “H” was pressured to sign a copy of the investigative report. He was reportedly told that this was simply a procedural matter and that he would then be released. However, “H” reported that he signed the document without reading it. Since then he was charged and sent to the *juge d’instruction* (i.e. the examining magistrate) who ordered his detention. Amnesty International understands that “H” has been charged in connection with “participation in a terrorist network operating abroad”.

Another Algerian man in his mid-30s, Reda Dendani, formerly known for legal reasons only as “Q”, was arrested on 25 January 2007, five days after his deportation from the UK, and held by the DRS. He was reportedly transferred from DRS custody to prison on 5 February, following the expiry of the 12-day maximum period of detention without charge or access to legal counsel. Amnesty International received reports that while Reda Dendani was held by the DRS, he too was not allowed access to the outside world, except for being permitted to make one phone call. According to the information received by Amnesty International, Reda Dendani was remanded into custody on 5 February. He is also reportedly being held in

Serkadji Prison. Amnesty International's information indicates that he too has been charged in connection with "participation in a terrorist network operating abroad" and with falsifying documents.

According to reports received by Amnesty International, Reda Dendani also had meetings with officials from the Algerian Embassy in London. Like "H", Reda Dendani was given verbal assurances, repeated more than once, that he was not wanted by the Algerian authorities, and that after a brief period of detention upon returning to Algeria, he would be released.

Reda Dendani and "H" were among a group of men interned without charge or trial under the now defunct Part 4 of the Anti-terrorism, Crime and Security Act 2001 (see background section below). All were previously interned in high security prisons in the UK. In March 2005 they were all "released" from detention under Part 4 and put under "control orders" imposed on them pursuant to the Prevention of Terrorism Act 2005. They were then re-arrested in August 2005 and held under immigration powers pending deportation on national security grounds to Algeria.

Like four other Algerian men who have been deported from the UK to Algeria, Reda Dendani and "H" decided to withdraw their appeals against deportation in 2006. They had faced a stark choice: either to continue to challenge their deportation to Algeria while held in a high-security prison or under strict bail conditions amounting to house arrest for years on end, or to brave an uncertain future fraught with risk by returning to that country. To pursue their appeal against deportation would have meant continuing the years' long legal battle, as well as subjecting themselves and/or their families to more years of suffering. Both men, like four others so far, lost all faith in the possibility that they would receive any meaningful justice in the UK. In the circumstances, in 2006 they withdrew their appeals against the deportation orders. They preferred to return to Algeria, despite the risks they would face.

Another Algerian man, known only as "K" for legal reasons, was also deported from the UK to Algeria on or around 24 January 2007 on "national security" grounds. He was one of the six Algerian men who had withdrawn his appeal against deportation. Upon arrival in Algeria, he too was held by the DRS, but later released without charge. According to information received by Amnesty International, "K" was told in the course of his interrogation that another Algerian man, Mohammed Meguerba, did not specifically incriminate him, but did incriminate Reda Dendani.

In May 2005, the London-based newspaper *The Times* published an article in which it stated that Mohammed Meguerba had been tortured in Algeria before admitting his role in an alleged conspiracy to produce poisons and/or explosives in the UK. In September 2002 Mohammed Meguerba had been arrested in London but had subsequently been released on bail. While on bail, he reportedly fled the UK and returned to Algeria, where he was arrested. *The Times* reported that Mohammed Meguerba had been held in a secret detention centre by the DRS for 17 months. His relatives told *The Times* that they had only become aware of his detention since December 2002, when he was moved to Serkadji Prison in Algiers in 2004.

The article described how when his family had visited Mohammed Meguerba in prison he had lost a lot of weight and how he had told them that he had been tortured. *The Times* article stated that when he appeared before a court in Algiers in May 2005 on charges of membership of a terrorist organization Mohammed Meguerba looked frail and had many of his teeth missing.

Amnesty International is extremely concerned that information allegedly obtained from Mohammed Meguerba under torture is reportedly being used against some of the Algerian men who have recently been deported from the UK, including at least against Reda Dendani. In addition, Amnesty International notes that a significant part of Mustapha Taleb's challenge against his deportation was based on evidence adduced on his behalf that, once deported to Algeria, he would be prosecuted on the basis of information that had been obtained as a result of Mohamed Meguerba's torture. The fact that this is exactly what appears to be happening in the case of Reda Dendani seems to indicate that Mustapha Taleb's prediction was accurate.

"K" was also told during his interrogation that "H" had been incriminated by a witness in Algeria in respect of allegations arising from his conduct in the mid 1990s and specifically related to Afghanistan.

Amnesty International has a number of concerns about the judicial process in Algeria in cases where defendants are charged with terrorism. Firstly, the judicial authorities routinely fail to investigate allegations that torture or other ill-treatment has been committed by the DRS. Secondly, statements allegedly made under torture or ill-treatment by individuals who have been detained by the DRS are routinely used to obtain convictions in court. Thirdly, Algerian law retains a broad definition of terrorism, which was initially introduced under emergency legislation in 1992 and later incorporated into the Penal Code. The definition of terrorist offences is so broad as to allow for the criminalization of the peaceful exercise of certain civil and political rights.

Background

In August 2005, following the UK government signing a Memorandum of Understanding (MoU) with Jordan (see below for a fuller discussion of this issue), 10 people were arrested and detained pending deportation on "national security" grounds. Among them were nine Algerian men who had been interned without charge or trial under Part 4 of the Anti-terrorism, Crime and Security Act 2001 until March 2005, and who were then subjected to "control orders" under the Prevention of Terrorism Act 2005. Since then, other foreign nationals have also been served with deportation orders on "national security" grounds, and held under immigration powers pending deportation, including seven Algerian men who were arrested and detained in September 2005. Among them were some individuals (including Mustapha Taleb, see above) who were charged, tried and eventually acquitted in 2005 of all charges in connection with an alleged conspiracy to produce poisons and/or explosives. Jurors involved in the case stated that they were angry that their verdicts were ignored and were concerned that the men would face torture or death if deported to Algeria. One juror said: "If anyone has grounds for asylum in this country, it is these men."

The UK authorities' above-mentioned deportation attempts to Algeria have taken place in parallel with similar attempts to deport other people to their country of origin, including Libya and Jordan, despite the existence of a real risk that the individuals concerned will be tortured or otherwise ill-treated or will suffer other violations of their fundamental human rights upon their forcible return to these countries.

Since 11 September 2001, the UK authorities have labelled a number of male foreign nationals, many of whom are Algerians, as "suspected international terrorists" and "national security risks". Despite the seriousness of the authorities' assertions, with respect to the vast majority of these men against whom these accusations have been levelled, the UK authorities insist that they do not have sufficient admissible evidence to bring criminal charges against them. As a result, instead of bringing these men to justice, the UK authorities have been seeking to deport them to their country of origin.

In light of this, Amnesty International considers that in resorting to deportations the UK authorities are failing in their primary duty to bring to justice those they claim are involved in terrorism and are a threat to "national security".

Proceedings in which deportation orders made by the UK authorities on grounds of "national security" can be challenged are such that the UK authorities do not have to prove much -- due to the low standard of proof applied -- to have the challenges dismissed. The appeal proceedings against orders for deportation on "national security" grounds are profoundly unfair, denying individuals the right to a fair hearing, including because of heavy reliance on closed hearings in which secret information, including intelligence material, is considered in the absence of the individuals concerned and their lawyers of choice, and because of the application of a particularly low standard of proof. In addition, in the context of recent cases, the proceedings have taken place for the most part in secret, even when the tribunal hearing these challenges is purportedly considering the safety upon return part of the appeal against deportation, rather than the "national security" grounds of the challenge.

Amnesty International has also been profoundly concerned at the UK authorities' resort to "diplomatic assurances" and frameworks for such assurances contained in MoUs to seek to circumvent the prohibition of sending persons to countries where they face a real risk of serious human rights violations, including torture or other ill-treatment. Amnesty International considers that the resort to diplomatic assurances and MoUs is having a profoundly deleterious effect on the fight for the eradication of torture, in particular, and on the integrity of international human rights law in general.

The UK government continues to assert that "diplomatic assurances", featured in MoUs it has already concluded with Jordan, the Lebanon and Libya, and with other countries with which it hopes to conclude them, can be relied on to relieve the UK of its human rights obligation not to send people to countries where they would face a real risk of torture, other ill-treatment or other violations of their fundamental human rights.

Despite having failed to secure such an MoU with Algeria, and despite acknowledging that there is a risk for certain individuals upon return to that country, the

government has claimed that “assurances” obtained from Algeria on a case-by-case basis would eliminate that risk in any event.

In this context, since June 2006 the government has already deported six Algerian men to their country of origin. On their return to Algeria, each of the six was arrested and detained incommunicado by the DRS. In addition, two of them (see above, “H” and Reda Dendani) have now been charged, reportedly with “participation in a terrorist network operating abroad”. The other four were released without charge.

With respect to Algeria, Amnesty International notes with concern that there has been a lack of clarity about the application of the amnesty law. The law granted exemption from prosecution to members of armed groups who surrendered to the authorities within a six-month period and, according to official statements, up to 300 armed group members surrendered before the deadline expired, but it was not known how many of them were exempted from prosecution and by what process. The authorities announced that those giving themselves up beyond expiry of the deadline would benefit from similar measures, but no formal extension of the amnesty law has been issued.

According to official statements, some 2,200 people who had been charged with or convicted of involvement in terrorist activities were freed from detention under the terms of the law in March 2006 and in the following months, but the names of those released and the process for determining eligibility have not been published. The law stipulated that those detained or imprisoned for alleged involvement in terrorist activities would be eligible for the amnesty, as long as they had not participated in collective killings, rape and bomb attacks. Those charged with involvement in international terrorism were not eligible, but, according to Amnesty International’s information, several such detainees were initially released, although later rearrested and detained. In addition, other detainees who would have been eligible for amnesty have not been released.

The amnesty law also granted an unconditional amnesty to members of the security forces who have committed human rights violations and barred Algerian courts from considering complaints against them, thereby effectively signalling to perpetrators of torture and other ill-treatment that they can act with impunity. Further, the law made it a criminal offence punishable by up to five years’ imprisonment to criticize publicly the past or ongoing conduct of the security forces.