

AMNESTY INTERNATIONAL

Briefing

AI Index: MDE 28/006/2009

Date: 18 September 2009

Algeria/USA: Amnesty International opposes forcible return to Algeria of Algerian nationals detained by US authorities at Guantánamo Bay, Cuba

There may be as many as 60 detainees of different nationalities currently being held by the US authorities at Guantánamo Bay, Cuba, who should not be forcibly returned to their home countries because this would place them at risk of torture or other serious human rights violations in these states.

Amnesty International considers that those detained at Guantánamo Bay must be either charged by US authorities and brought to trial in conformity with international standards of fair trial or released, and that in no cases should such detainees be returned involuntarily to their countries of nationality or habitual residence, directly or through other states, if this would place them at risk of torture or other serious human rights violations. Such detainees should be offered residence in the USA or in other states in which they would not be at risk of torture or other serious human rights violations.

While Amnesty International considers that the US government has the primary responsibility to end the Guantánamo Bay detentions, the organization is also calling on other governments to offer humanitarian protection to detainees who would be at risk in their countries of nationality or habitual residence in order to help end their ordeal and to facilitate the closure of the Guantánamo Bay prison.

ALGERIAN NATIONALS AT GUANTÁNAMO BAY: RISK FACTORS

In August 2009, 12 Algerian nationals were being detained at Guantánamo Bay, all of whom, Amnesty International considers, would be at risk of serious human rights violations – incommunicado detention, torture and other ill-treatment, and unfair trial - if they should be returned involuntarily to Algeria. Amnesty International's assessment in this regard is based on its continuous monitoring of human rights in Algeria over many years, particularly human rights violations committed in the context of counter-terrorism, including violations committed against Algerian nationals forcibly returned from other states where they were considered terrorism suspects.

ALGERIA: COUNTER-TERRORISM AND HUMAN RIGHTS

Massive human rights violations, including secret detention, torture and other cruel, inhuman and degrading treatment or punishment and enforced disappearances were committed by the Algerian security forces during the 1990s, in the name of counter-terrorism. Although today the level of serious human rights abuses in Algeria has decreased compared to the 1990s, detainees continue

to be held incommunicado and torture and other ill-treatment continue to be committed by the security forces in the context of counter-terrorism.

Thus, while there has been a decrease in reports of torture and other ill-treatment of persons in custody of the police and the gendarmerie, torture and ill-treatment continue to be used regularly by the Department for Information and Security (*Department pour le Renseignement et la Securite*, DRS), a branch of the Algerian intelligence services which is involved in detaining and interrogating persons suspected of involvement in terrorism. Suspects detained by the DRS continue systematically to be held in secret in unrecognized places of detention, usually military barracks, and to be denied any contact with the outside world, often for prolonged periods. It is when detainees are held incommunicado that they are most at risk of torture and other ill-treatment.

Amnesty International has received dozens of allegations of torture and other ill-treatment of detainees held by the DRS in recent years. The most frequently reported methods of torture include beatings, electric shocks and the *chiffon* method, in which the victim is tied down and forced to swallow large quantities of dirty water, urine or chemicals through a cloth placed in their mouth. Detainees have also reported being undressed and humiliated, beaten on the soles of their feet (a method known as *falaka*), suspended by the arms from the ceiling for prolonged periods, or threatened that female family members would be arrested and raped. The purpose of the torture and other ill-treatment, in most cases reported to Amnesty International, is to extract information or confessions from the detainees about activities of armed groups in Algeria, or about international terrorism. It appears that some arrests are made on the basis of information obtained from detainees under torture or other duress. Detainees are usually forced to sign an interrogation report by their interrogators, which often contains a "confession" to involvement with armed groups or international terrorism, even though detainees are not allowed to read the report and may be too frightened even to ask to read it. Sometimes, interrogation reports contain declarations that the detainees were well-treated in detention (see below).

ALGERIA'S AMNESTY MEASURES

Since 1999, the Algerian authorities have introduced various amnesty measures for members of armed groups with the stated aim of putting an end to the internal conflict that ravaged the country in the 1990s. These amnesty measures were limited to certain categories of members of armed groups that were active in Algeria, were limited in time, and have not been extended to Algerian nationals suspected of "belonging to terrorist groups operating abroad."

The Civil Harmony Law, or Law 99-08 exempted from prosecution members of armed groups who surrendered within six months of the law's entry into force on 13 July 1999. Another amnesty measure, announced on 10 January 2000, granted amnesty and blanket immunity from judicial prosecution without any exclusion clauses to "persons who belonged to organizations which decided voluntarily and spontaneously to put an end to acts of violence" and surrendered themselves to the authorities; benefiting members of the Islamic Salvation Army (*Armée islamique du salut*, AIS) and the Islamic League for Preaching and Holy War (*Ligue islamique pour la da'wa et le djihad*, LIDD), two armed groups that had declared ceasefires in October 1997. The latest amnesty measure, Ordinance No. 06-01 of 27 February 2006, Decree Implementing the Charter for Peace and National Reconciliation, exempted from prosecution all members of armed groups who surrendered between 13 January 2000 and 28 February 2006. It also provided for the release under an amnesty of those already detained or imprisoned for alleged involvement in terrorist activities, except those responsible for committing collective killings, rape and bomb attacks.

In addition to members of armed groups, the Decree Implementing the Charter for Peace and National Reconciliation also provided immunity against prosecution to members of security forces and state armed militias who committed grave violations of human rights, including torture,

enforced disappearances and extrajudicial killings, during the internal conflict.

To date, the Algerian authorities have failed to disclose detailed information regarding the number and identities of the individuals who have received immunity as a result of the various amnesty measures. Nor have they disclosed information about any investigations that may have been conducted in order to determine eligibility under these measures, or how many individuals have been prosecuted and how many were acquitted or convicted and under what charges. What is clear is that some of those who had been detained or imprisoned for alleged involvement in terrorist activities and who appeared to be eligible to benefit from the amnesty measures did not do so, heightening suspicion that, in practice, the authorities have applied the various amnesty measures in an arbitrary way.

Given the nature of the amnesty measures and concerns over their application as described above, Amnesty International does not consider that the amnesty measures are in any way relevant to allay concerns that Algerian nationals who are forcibly returned to Algeria from Guantánamo Bay or elsewhere would be exposed to a serious risk of torture and other serious human rights violations in Algeria.

THE REMIT OF THE DEPARTMENT FOR INFORMATION AND SECURITY

According to Algerian law, DRS personnel can exercise the role of judicial police, a function usually exercised by police and gendarmerie. Officers of the judicial police have powers to open police investigations, arrest suspects, and detain them for questioning for a fixed period of time, known as *garde à vue*, (pre-arraignment detention) until they are either charged or released. The period of *garde à vue* is limited to 48 hours in ordinary criminal cases, but may be extended to up to 12 days in cases linked to alleged terrorist activity. Even if it were respected in practice, this 12-day time limit contravenes Article 9 of the International Covenant of Civil and Political Rights (ICCPR), to which Algeria is a state party and which states that “anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by the law to exercise judicial power”, particularly as detainees are denied access to legal counsel during this period (which also facilitates violations of Article 7 of the ICCPR, as it takes away a key safeguard for the protection of every detainee against acts of torture).

Amnesty International’s research indicates that even the legal safeguards protecting detainees, as stipulated in Article 51 bis 1 of the Algerian Criminal Procedure Code - such as their right to communicate immediately with their family and receive visits from them, and to be medically examined by a doctor of their choice at the end of the period of *garde à vue* - are usually ignored in practice by the security forces. This has generated a widespread pattern of secret and unacknowledged detentions, during and beyond the maximum permissibly 12-day period of *garde à vue*.

The judicial police operate under the authority of the public prosecutor. However, DRS personnel appear to operate, in effect, without oversight by the prosecutor or any other civilian authorities. Unlike in the case of arrests carried out by police or gendarmerie officers, prosecutors seem not to be kept informed of arrests carried out by the DRS and apparently do not visit DRS barracks which are used as places of *garde à vue*. Therefore, no civilian institution appears in practice to oversee the arrest and detention procedures of the DRS, or to ensure that they comply with provisions of Algerian law designed to protect detainees from torture and arbitrary detention.

LEGAL PROCEEDINGS AGAINST INDIVIDUALS CHARGED WITH TERRORISM-RELATED ACTIVITIES

Detainees charged with terrorism-related activities have reported that after they were held in *garde à vue* by the DRS, and before they were taken before an investigating judge, they were forced to

sign or thumb-print interrogation reports which they were not allowed to read. Some detainees allege that they were forced to sign under threat of further torture or even execution; others that they were tortured or otherwise ill-treated to force them to sign the reports. In some cases, detainees were reportedly given the reports after having been forced to sign them and threatened that they would be returned to the place of detention if they should retract or repudiate their statements in court. In several cases, lawyers discovered that among the papers signed or thumb-printed by the detainee before they were brought before the judicial authorities were declarations stating that they had been well-treated in detention and not tortured or otherwise ill-treated – such declarations, it appears, may have been prepared in order to cover up human rights violations committed against detainees by DRS officers or to exert pressure on detainees not to disclose in court that they were subjected to torture or other ill-treatment.

Amnesty International is also concerned at the use of interrogation reports obtained by the DRS as evidence in Algerian courts. Such reports often constitute the only evidence used to convict a person in court, although Article 215 of the Criminal Procedure Code stipulates that interrogation reports of the judicial police do not constitute evidence and may only be used for information during judicial proceedings. Given the lack of judicial oversight and persistent allegations of torture in DRS custody, it is clear that these statements are often obtained under torture or other ill-treatment. Given the general lack of investigations into detainees' allegations of torture and the pattern of impunity of members of the DRS, the validity of such statements is rarely challenged by the investigative judge or at trial. Algerian law contains no express prohibition against the use or admissibility of statements or confessions obtained under torture.

For instance, Abderhamane Mehalli, who was convicted on a number of terrorism-related charges, including belonging to a terrorist group, and sentenced to four years' imprisonment in December 2008, reportedly "confessed" to the charges against him under duress and in fear of further torture or other ill-treatment. When first detained, Abderhamane Mehalli was held for 11 days without any contact with the outside world, at an undisclosed location believed to be the Antar barracks of the DRS in Algiers. When he was brought in front of the investigative judge in January 2007, he is reported to have told the judge that he had been tortured and to have expressed the fear that if he disclosed the details he would be returned to the barracks of the DRS and subjected to further torture. However, the judge failed to order an investigation into his allegations.

IMPUNITY ACCORDED TO LAW ENFORCEMENT OFFICIALS ALLEGED TO HAVE COMMITTED TORTURE AND OTHER HUMAN RIGHTS VIOLATIONS

Torture and other forms of ill-treatment against individuals suspected of terrorism take place in Algeria in a climate of virtually total impunity. Even though amendments were introduced in the Algerian Penal Code in 2004 to criminalize torture and extend liability to any public official that uses, incites or orders the use of torture, as well as to those who are complicit in its use, the amendments to the law have failed to end the impunity enjoyed by DRS officials and other security forces responsible for human rights violations.

Some detainees who have been tortured do not complain to the public prosecutor, the investigative judge or the courts for fear that they will be subjected to further torture in reprisal by the DRS. In other cases, detainees have lodged complaints but these appear not to have been investigated by those to whom the complaints were made, including prosecutors, investigating judges and the courts. Further, although Amnesty International has drawn the attention of the authorities to many allegations of torture and other ill-treatment of detainees, it has received no information to indicate that the authorities have carried out a full, impartial and independent investigation into allegations of torture by DRS officials, as international law requires.

Prison guards are also reported to torture and otherwise ill-treat detainees with impunity. In

February 2008, for example, at least 30 detainees facing terrorism-related charges were reported to have been severely assaulted by guards at El Harrach Prison, Algiers, for refusing to return to their cells in protest at the loss of their prayer zone – they are reported to have been stripped naked, kicked, punched, beaten with metal bars and threatened with sexual abuse. One inmate sustained a broken leg, another sustained a fractured jaw. Several of the detainees made formal complaints and were questioned about the incident by judicial officials but the outcome of any investigation has yet to be disclosed publicly and no prosecutions have been brought against alleged perpetrators. However, a lawyer for one of the complainant’s was informed by the Public Prosecutor of the Sidi Mohamed Court in a letter dated 19 February 2009 that an “administrative enquiry” had been held and had found no proof of the allegations against officials of El Harrach Prison. This suggests that only an administrative inquiry was conducted, not an independent enquiry as required by international human rights law.

RISKS FACING ALGERIAN NATIONALS SUSPECTED OF INVOLVEMENT IN TERRORISM-RELATED ACTIVITIES RETURNED FROM ABROAD

A number of Algerian nationals living abroad have been forcibly returned or deported to Algeria on the grounds that they were suspected of involvement in terrorism and were considered a security risk in the state in which they were residing. Some who were convicted of terrorism-related offences in the state in which they were residing were deported to Algeria prior to or when they were due to be released after serving prison terms; others had either not faced any charges related to their alleged involvement in terrorist activities or had been tried and acquitted of such charges before they were forcibly returned to Algeria.

Such returnees have generally been arrested upon arrival in Algeria and detained for questioning by the DRS. It is difficult, however, to ascertain how they were treated while in custody as many are unwilling, after release, to disclose details of their treatment, possibly because they have been warned by the authorities not to divulge such information or because they fear re-arrest. Despite this, Amnesty International has been able to obtain information in a limited number of cases from former detainees, lawyers and others. The picture that emerges in these cases is of detainees being held without charges by the DRS for up to 12 days at secret, undisclosed locations where they were denied all contact with the outside world and interrogated about their possible links with domestic armed groups or with presumed terrorist networks abroad. Some were then released; others were charged with terrorism-related offences, remanded in custody and subsequently tried. Most such returnees have not alleged that they were tortured during their detention by the DRS but in at least some cases this may have been due to a fear that this could expose them to further detention and torture or other ill-treatment. However, two Algerian nationals who were detained by the DRS after they were deported from the United Kingdom in 2007 alleged that they were ill-treated in DRS custody and one of the two, known only as “H” for legal reasons, said he had heard other people crying and screaming with pain whom he assumed were being subjected to torture or other abuse. Both men were convicted in November 2007 of belonging to terrorist networks operating abroad on the basis of interrogation reports prepared by the DRS which they said they were forced to sign without knowing their content. The two had no legal representation when they were first taken before an investigative judge at the end of the period of *garde à vue* detention. Their allegations of ill-treatment were discounted by the trial court without investigation.

In the vast majority of cases known to Amnesty International, Algerian nationals suspected of involvement in terrorism-related activities in Algeria or abroad who are detained by the DRS upon their return to Algeria, whether voluntary or enforced, are not permitted any contact with their families during *garde à vue*. Nor are they permitted to receive visits by relatives, in breach of Article 51 bis 1 of the Algerian Criminal Procedure Code. Even in high-profile cases involving the authorities of another state, the DRS has felt able to flout safeguards for detainees contained in Algerian law, which stipulate that detainees have the right to receive access to relatives. For example, eight Algerian nationals who were transferred from Guantánamo Bay to Algeria between

July 2008 and January 2009 were held incommunicado by the DRS for periods ranging between eight and 13 days. Upon release, they were placed under judicial control, accused of belonging to a terrorist group active abroad. In April 2009, Feghouli Abdelli and Mohammed Abd Al Al Qadir were referred to trial before a criminal court on such charges and on charges of using forged documents, while Mustafa Ahmed Hamlily and Abdul Rahman Houari were referred to trial in June 2009 on charges of belonging to a terrorist group operating abroad. They are expected to stand tried in the next judicial session in October or November 2009. Three others continue to face charges of belonging to a terrorist group active abroad but have not yet been referred for trial before a criminal court. One of the eight, Mammour Ameur, who was returned in October 2008, has been cleared of the charge against him.

During their period of *garde à vue*, the Algerian authorities did not disclose any information about the eight detainees to their families and lawyers, increasing concern for their safety and in breach of the requirements of Algerian national law. The ease with which the DRS is able, in practice, to ignore the safeguards contained in Algerian law, even in such high profile cases, and to do so with impunity, indicates that all detainees held by the DRS must continue to be considered at risk of torture and other ill-treatment.

Amnesty International does not know whether any of the eight returnees from Guantánamo Bay was tortured or otherwise ill-treated during detention by the DRS; none of them have spoken about their treatment since their release from detention. However, on 17 July 2008, the London-based newspaper, *Al-Sharq Al-Awsat*, reported that Abdul Rahman Houari had commented after his release: 'They treated us well there [in Guantanamo] but here [in Algeria] all legal procedures were correct', but this should be treated cautiously and may reflect a concern on the part of the recently released detainee that he should not place himself at further risk by criticizing the DRS or other Algerian authorities.

In its concluding observations, given in May 2008, on its review of Algeria's third periodic report (UN Doc: CAT/C/DZA/3, 10 February 2006), the UN Committee against Torture urged the Algerian authorities to ensure that all places of detention, including those operated by the DRS, are brought under the control of civilian authorities. In doing so, the Committee drew attention to persistent reports of the existence of secret detention centres run by the DRS and urged the authorities to ensure that the maximum period of *garde à vue* is respected, and that detainees are granted unhindered access to lawyers, their families and independent medical examinations. The Committee also urged the authorities to investigate all allegations of torture and to bring to justice those responsible for perpetrating torture. To date, the Algerian authorities are not known to have taken any steps to implement these recommendations.

In light of the above, Amnesty International is concerned that the Algerian nationals currently detained at Guantánamo Bay would be at serious risk of arbitrary arrest and incommunicado detention, and torture and other ill-treatment by the DRS if they were to be forcibly returned to Algeria and so Amnesty International opposes their forcible return or that of individuals in other states who would be placed at similar risk if they were to be forcibly returned to Algeria.