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# Algeria

## Briefing to the Committee Against Torture

### Introduction

Amnesty International submits this briefing for consideration by the Committee Against Torture in view of its forthcoming examination of Algeria's third periodic report on measures taken to implement the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('Convention'). This briefing summarizes some of Amnesty International's main concerns on Algeria, as documented in a number of the organization's past reports.<sup>1</sup> These concerns relate broadly to a persistent pattern of secret detention and torture by the Department for Information and Security (Département du Renseignement et de la Sécurité, DRS), an intelligence agency which specializes in interrogating individuals who are believed to have information about terrorist activities; to the failure of the state party to provide an effective remedy to victims of human rights abuses, including torture and ill-treatment; and to continuing violence against women.

Torture and other ill-treatment of detainees suspected of terrorist activities in Algeria are being committed in the wake of more than a decade of violence, sparked by the cancellation in 1992 of the multi-party elections which the Islamic Salvation Front (Front Islamique du Salut, FIS), an Islamist political party, was widely expected to win. During the internal conflict, safeguards for human rights protection were grievously eroded. Human rights violations in the name of counter-terrorism became entrenched as security forces ruthlessly combated armed groups who were committing grave and widespread abuses against civilians, including unlawful killings, abductions, torture and rape.. The state's security forces and, later, state-armed militia (referred to by the authorities as "legitimate defence groups", "self-defence groups" or "patriots") committed massive human rights violations and abuses, including extrajudicial executions and other unlawful killings, enforced disappearances, secret and arbitrary detentions, and torture and other ill-treatment of thousands of real or suspected members or supporters of armed groups. The DRS, the force most associated with torture and other ill-treatment today, played a key role in the escalation of such human rights violations during the 1990s.

Notwithstanding the decrease in violence and gross human rights abuses associated with the internal conflict that has occurred in recent years, Amnesty International continues to regularly

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<sup>1</sup> For more information, please refer to Amnesty International's previous documents on Algeria, including *Algeria: Briefing to the Human Rights Committee* (September 2007, AI index: MDE 28/017 /2007); *Unrestrained powers: Torture by Algeria's Military Security* (July 2006, AI index MDE 28/004/2006); *Algeria: Torture in the "War on Terror" – a Memorandum to the Algerian President* (April 2006, AI index MDE 28/004/2006) and *Algeria: Steps towards change or empty promises?* (September 2003, AI index MDE 28/005/2003).

receive reports of incommunicado detention of suspects in unofficial places of detention and torture by the DRS, in the context of the government's counter-terrorism operations. Further, while the initiative taken by the government in 2004 to enact provisions in national law to criminalize torture was welcome, it can be noted that these new provisions have failed to end the use of torture by the DRS.

The vast majority of the human rights abuses committed by both armed groups and state security forces, including torture and ill-treatment, in the context of the internal conflict have not been investigated. Impunity for past violations has been further entrenched through amnesty laws introduced by the government in 2006 with the stated intention of bringing closure to the years of violence. These laws provided for exemption from prosecution or release under an amnesty of those convicted of or detained on charges of terrorist activity, and granted comprehensive impunity to members of the security forces responsible for human rights violations.

Women have been particularly affected by violence since the onset of the internal conflict. They have been targeted for abduction, rape and other forms of sexual violence by armed groups, and have suffered disproportionately from the anguish at not knowing the truth as to the fate of thousands of men forcibly disappeared during the conflict. Further, violence against women within the family is prevalent. The Algerian authorities acknowledge this in principle but they have failed, to date, to take sufficient and effective measures to protect women from such violence. Many of the recommendations made by the Committee against Torture and other human rights bodies to the Algerian authorities have yet to be implemented.

## Patterns of torture and other ill-treatment in Algeria

Massive human rights violations, including secret detentions, torture and other cruel, inhuman and degrading treatment or punishment (hereafter: ill-treatment) 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, it is in the context of counter-terrorism measures that torture and ill-treatment continue to be committed. There has been a decrease in reports of torture and other ill-treatment of persons in custody of the police and the gendarmerie, but torture and ill-treatment continue to be used regularly by the DRS, widely known as “Military Security”.

There are fewer reports of torture and other ill-treatment today than there were during the height of the violence in the 1990s. However, suspects detained by the DRS continue systematically to be held in secret detention and denied any contact with the outside world, often for prolonged periods, in conditions which facilitate torture and may constitute ill-treatment.

### ***Enforced disappearances in the 1990s***

Testimonies obtained from victims of human rights violations, their families and human rights activists indicate that members of the DRS were responsible for systematic torture and extrajudicial executions of alleged sympathizers of the FIS during the 1990s. Arrests were usually carried out by security agents believed to be members of the DRS, operating in plain clothes. Amnesty International has received numerous reports of individuals who were arrested by Algerian security forces in the 1990s and who then “disappeared” while held at secret detention centres operated by the DRS, and whose fate and whereabouts remain to be clarified.

#### *Case of Salah Saker*

The continued use of secret places of detention is of particular concern in a country such as Algeria where thousands of people have “disappeared”, and remain unaccounted for to this day, after having been held at secret detention centres during the 1990s. In one such case, that of Salah Saker, a teacher and former member of the FIS from Constantine, eastern Algeria, the Human Rights Committee stated in April 2006 that Algeria had violated several provisions of the ICCPR by failing to protect his life, to ensure that he would not be subjected to arbitrary arrest, torture or other ill-treatment, and by denying him access to a court.<sup>2</sup>

Salah Saker “disappeared” in May 1994 after police arrested him at his home. In response to a complaint lodged with the prosecutor, his wife was notified in 1997 that, about a month after his arrest, Salah Saker had been transferred from police custody to the Territorial

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<sup>2</sup> *Bousroual (on behalf of Salah Saker) v Algeria*, CCPR/C/86/D/992/2001, 24 April 2006. See also *Kimouche v Algeria*, CCPR/C/90/D/1328/2004, 16 August 2007, paras. 7.6 and 7.7.

Centre for Research and Investigation in Constantine, part of which has been used as a secret detention centre by the DRS. His fate and whereabouts remain unknown.

### ***Methods and purpose of torture in DRS custody***

The most frequent reports of torture, as received by Amnesty International, include beatings, electric shocks, and the *chiffon* method, which consists in tying down a detainee and forcing him to swallow large quantities of dirty water, urine or chemicals through a cloth placed in themouth. Detainees have also reported being stripped of their clothes and humiliated, beaten on the soles of their feet (a method known as *falaka*), and suspended by the arms from the ceiling for prolonged periods during interrogation. In some cases, detainees allege that they were threatened that their female family members would be arrested and raped; in others, male detainees are alleged to have been sexually abused although few details are available due to the cultural sensitivity surrounding the issue of sexual violence against men in Algeria.

Most detainees have reported being tortured and otherwise ill-treated in order to force them to give information about the activities of armed groups in Algeria, or about international terrorism. Some detainees are reported to have been required under torture or other duress to divulge the names of other people with links to terrorism, leading to further arrests. Detainees are then usually forced to sign an interrogation report, which they may not be permitted to read. Many of these include the detainees "confessions" to involvement with armed groups or international terrorism. Some interrogation reports have contained declarations stating that detainees consider themselves to have been well treated in detention.

### ***Other reports of torture and other ill-treatment***

Most allegations of torture and other ill-treatment received by Amnesty International refer to detainees held at secret detention centres by the DRS. However, the organisation has also received reports of torture and other ill-treatment by other security forces or in official detention centres.

### **Torture and other ill-treatment in El Harrach prison**

On 19 February 2008, at least 30 detainees at El Harrach prison in Algiers, were reported to have been beaten severely by prison guards after they and other inmates refused to return from the prison yard to the ward of the prison in which they were held in protest at the transformation of their prayer zone into accommodation for more detainees. According to the information obtained by Amnesty International, they were taken individually or in groups of two or three to a hall where they were stripped naked, kicked, punched, beaten with metal bars, insulted and threatened with sexual abuse. One inmate sustained a broken leg, another had his jaw fractured, and a third sustained an injury to his nose. The detainees were then reportedly placed in solitary confinement as punishment, were denied visits for three days and medical care. No investigation is known to have been conducted into these alleged assaults

despite complaints made by lawyers for the prisoners, who were able to visit them three days later.

All the detainees involved in these incidents were held at El Harrach awaiting trial on terrorism-related charges at the time of the alleged assaults. One appeared presented before the Boumerdes criminal court a few days later, and is reported to have removed his shirt to show the court bruising caused by the 19 February beatings and complained about ill-treatment at the prison. The court then postponed his trial but failed to order an investigation into the alleged assault.

On 28 February, some 64 detainees were reported to have been transferred on 23 February from El Harrach prison to other prisons: Bouira penitentiary, Berouaguia prison in Medea province, and Guelma and Laghouat prisons.

### **Torture in the context of demonstrations**

Torture is not confined to cases connected with “acts of terrorism or subversion”. The security forces have also been responsible for torturing or otherwise ill-treating] both political activists arrested during or following demonstrations protesting against government policies or practices, and ordinary criminal suspects, though less much frequently than in the mid- to late-1990s. For instance, demonstrators detained in 2001 following anti-government protests in the north-eastern Kabylia region after secondary school student, Massinissa Guermah was shot dead in custody by a gendarme at Béni Douala<sup>3</sup>, were tortured after arrest. Dozens of other protesters were shot dead or wounded by the security forces.

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<sup>3</sup> The student died in hospital from his wounds on 20 April 2001. For further information on these events, see *Algeria: Steps towards change or empty promises?* Amnesty International (AI index MDE 28/005/2003, September 2003)

*Case of Kabyle activists in 2001*

On 8 July 2001, Youcef, a 19-year-old living in the town of Makouda in the north-eastern, predominantly Amazigh (Berber) region of Kabylia was arrested while taking part in a demonstration in his town against the killing of dozens of unarmed protesters by state security forces in the region during the previous three months. He was detained in the street by three gendarmes, who reportedly kicked him in the stomach and face, clubbed him with a baton on his head and genitals, and slashed with a knife by one gendarme, causing a facial injury.

Dozens of other people who were arrested during or following the Kabylia demonstrations in April 2001 are also reported to have been tortured or otherwise ill-treated; many by being beaten or cut with sharp implements in the street or while detained under the 48-hour period of *garde à vue* by being punched in the face, whipped with electric cable, subjected to the *chiffon* method of torture, or stripped naked and threatened with rape.

Lawyers representing those concerned have told Amnesty International that they were often reluctant to lodge complaints because they feared this would expose them or their families to further difficulties or risks.

## **Safeguards against torture or other ill-treatment in the custody of security forces**

Algerian law does not provide sufficient safeguards to protect detainees from torture and other ill-treatment. Moreover, the safeguards set in law are, in practice, disregarded when persons are arrested and detained on suspicion of links with terrorism. Such suspects are routinely held by the DRS incommunicado and in secret places of detention. During this time, they are denied contact with their families and to legal counsel and medical care, even when the duration of *garde à vue* permitted under national law – a maximum of 12 days - is significantly exceeded, for weeks or even months, in breach of the law. Algerian law does not give detainees a right of access to legal counsel during the period of *garde à vue*.

### ***Right of detainees held in garde à vue to have access to the outside world***

In its General Comment no. 2 on Implementation of article 2 by States Parties,<sup>4</sup> the Committee has emphasised that certain guarantees are applicable to all persons deprived of their liberty as effective measures for the prevention of torture as required by article 2 of the Convention. Among the guarantees highlighted by the Committee are maintaining an official register of detainees, the right of detainees to be informed of their rights, the right promptly to

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<sup>4</sup> CAT/C/GC/2/CRP.1/Rev.4, 23 November 2007.

receive independent legal assistance, independent medical assistance, and to contact relatives.<sup>5</sup>

Under Algerian law, individuals held on suspicion of terrorist activities may be detained without access to legal counsel for up to 12 days, until they are brought before a prosecutor and subsequently a judge. Changes to the Code of Criminal Procedure in 2004 introduced the right of defendants to be assisted by a lawyer when they are brought before the prosecutor, but only in cases where the person has been caught in the act and which therefore do not require further collection of evidence (*flagrant délit*).<sup>6</sup> The vast majority of terrorism-related cases, however, require further evidence-gathering and do not fall within this category.

### **Right of access to relatives**

Article 51 bis 1 of the Criminal Procedure Code guarantees the right of detainees to communicate with their families and receive visits from them. However, Amnesty International is not aware of any case in which persons detained by the DRS were allowed a visit by their family in the place of pre-arraignment detention. Those detained by the DRS are routinely denied access to the outside world, whether in the form of legal counsel, medical help, visits by families and by the judicial authorities, and are in effect held incommunicado.

Neither Algerian law nor policy appears to set any maximum timeframe within which relatives in all circumstances must be informed of the fact of detention. This is not in line with the UN Special Rapporteur on torture's recommendation that in all circumstances, relatives should be informed within 18 hours.<sup>7</sup> On being taken into custody, detainees are not informed of their right to communicate immediately with their families. The families of those arrested are generally not informed of the place of detention where their relative is being detained, nor are they afforded a means to communicate, let alone visit, the detainee. Relatives who enquire with the police, gendarmerie, or public prosecutor are generally told that the person is not being detained, or that the place of detention is unknown. Sometimes they are informally told by officers of the judicial police that their relative is being held by the DRS, but not at what place of detention. There is no publicly available registry of those arrested and detained by the DRS. In practice, detainees held by the DRS are held incommunicado, and their relatives are not informed of the place of detention or when the detainees is moved from one place of detention to another. This, understandably, causes many relatives grave anxiety.

#### *Case of Kamal Akkache*

On 11 September 2007, about eight men in plain clothes abducted [OK?]Kamal Akkache outside a mosque in El-Mouradia, Algiers,<sup>8</sup> pointing a gun at his head and forcing him into his own car, which they drove off to an unknown location. The men reportedly told passers-by

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<sup>5</sup> Paragraph 13.

<sup>6</sup> Article 59 of the Code of Criminal Procedure.

<sup>7</sup> E/CN.4/2003/68, para. 26, g

<sup>8</sup> In 1992, Kamal Akkache had been sentenced to six years in prison, after he was convicted of belonging to a "subversive" group. Kamal Akkache was released in 1998 on completion of his sentence.

who sought to intervene that they were DRS agents. A market worker, Kamal Akkache suffers from epilepsy. It is not known if he has access to the medication he needs.

On the morning of 16 September, six men in plain clothes searched Kamal Akkache's home and removed certain of his belongings, including a computer, video camera, religious books and a DVD, as well as his daily medication for epilepsy, but refused to tell his father why he had been arrested or where he was being held.

Kamal Akkache's father reported his abduction to the police, who passed the case to the general prosecutor. It has also been reported to the National Council for the Promotion and Protection of Human Rights (Commission nationale consultative de promotion et de protection des droits de l'Homme, CNCPPDH), Algeria's official human rights body.

On 16 November 2007, the UN Special Rapporteur on torture sent an urgent request for information about Kamal Akkache's case to the Algerian government but to date, some seven months after he was seized from the street apparently by state agents, the authorities are not known to have disclosed any information about him.

*Persons deported to Algeria by the UK since 2006*

Despite substantial evidence that detainees held by the DRS are subject to torture or other ill-treatment or abuse of the rights guaranteed to them under Algerian law, in recent years the authorities in other states returned Algerian nationals whom they suspect of involvement in terrorism, including in violation of the principle of non-refoulement. At least nine Algerian nationals have been deported since 2006 by the United Kingdom authorities on the grounds that they were considered a "threat to national security".<sup>9</sup>

Of these nine, eight were arrested and detained by the DRS; seven were arrested on arrival at Algiers airport and the eighth within days of his arrival. All were initially held incommunicado but none of them have alleged that they were tortured,<sup>10</sup> although two allege that they were ill-treated. One of these, known only as "H" for legal reasons, reported that while held by the DRS he had heard other people crying and screaming with pain.

In an unprecedented development, three of the eight detainees were allowed to phone relatives living in Algeria from their place of detention to reassure them, though they were not able to disclose where they were detained. In all other cases known to Amnesty International, those detained by the DRS are not permitted any contact with their families

<sup>9</sup> For more information, see *United Kingdom: Deportations to Algeria at all costs*, Amnesty International (AI index: EUR 45/001/2007, 26 February 2007).

<sup>10</sup> Amnesty International notes that, in its experience, the fact that someone has just been released from DRS custody will weigh heavily on their mind when they speak about their treatment in detention, in case they expose themselves to possible retribution.

during their pre-arraignment detention and nor are they permitted to receive visits by relatives, as required by Article 51 bis 1 of the Algerian Criminal Procedure Code. Even in such high-profile cases, involving the authorities of another state, the DRS felt able to flout certain of the safeguards for detainees contained in Algerian law. These safeguards, if fully respected, could reduce the risk and incidence of torture or ill-treatment of detainees held by the DRS, but the ease with which the DRS ignores and breaches them, and the impunity with which it does so, indicates that all detainees held by the DRS must continue to be considered at grave risk of torture and other ill-treatment.

Of the eight returnees who were detained, two only (known as “Q” and “H”) were tried in Algerian courts and convicted of belonging to a terrorist network operating abroad. Their convictions were based on the interrogation reports prepared by the DRS, which the defendants alleged they had been forced to sign without knowing the content. Both men did not have legal representation when they were first presented before an examining judge at the end of their pre-arraignment detention. They said they were ill-treated in DRS detention but the trial court failed to order an investigation and they were sentenced to prison terms in November 2007.

### Right of access to medical care

Article 51 bis of the Criminal Procedure Code grants detainees the right to a medical examination by a doctor of their choosing at the end of the *garde à vue* detention if a request is made, and states that detainees should be informed of this right.<sup>11</sup> Yet, detainees held by the DRS say they were not medically examined at the end of their pre-arraignment detention, or informed of this right.

Under Article 52 of the Criminal Procedure Code, the public prosecutor can appoint a medical doctor to examine detainees held in pre-arraignment detention, either at his own initiative or at the request of the detainee or his family. However, Amnesty International is not aware of cases in which this has been done.

In fact, in no cases known to Amnesty International have detainees been allowed independent medical examinations while held *garde à vue* by the DRS. Nor, in cases of alleged torture obtained by Amnesty International, have detainees been permitted to be examined by a doctor of their own choosing once their detention by the DRS had ended. When medical certificates are provided by the DRS, when a detainee is presented to the judicial authorities, these appear to be a mere formality stating the detainee’s general health condition which never document traces of violence.

In exceptional cases, detainees are reported to have been referred to Ain Naadja military hospital for medical treatment, including after torture or other ill-treatment. In such cases, however, it appears that medical reports make no mention of any torture-related injuries.

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<sup>11</sup> Articles 51 bis 1 and 51 bis of the Code of Criminal Procedure.

*Case of Mounir Hammouche*

On 23 December 2006, Mounir Hammouche, aged 26, was arrested by armed plain clothes security officers in the town of Ain Taghrout, in the wilaya of Bordj Bou Arreridj. His family was received no news of him after his arrest until security officials telephoned them on 29 December 2006 to inform them that he was dead. They said that he was believed to have committed suicide and that an autopsy had already been conducted, so there was no need for the family to request one.

When Mounir Hammouche's corpse was returned, his relatives noted that it bore a head wound and bruises on the hands and feet. They buried the body on 30 December, under heavy security presence. The autopsy report to which the security forces had referred is not known to have been seen by Mounir Hammouche's family. On 26 June 2007, the Algerian government responded to a joint communication from the UN Special Rapporteurs on torture and on extrajudicial, summary or arbitrary executions extrajudicial executions saying that a forensic examination had shown that the death was due to asphyxia caused by hanging. As far as Amnesty International is aware, however, no thorough and independent investigation has been carried out in the circumstances of the death of Mounir Hammouche, including how the injuries noted by his relatives were caused.

### **Right of access to legal counsel**

Article 100 of the Code of Criminal Procedure guarantees the rights of detainees to legal counsel of their own choosing and to choose not to make a statement before an examining judge. The article also sets out the duty of the judge to inform detainees of these rights. Article 105 provides that court hearings cannot take place without the presence of a defendant's lawyer, unless the detainee makes an express declaration that he or she does not wish to be represented by a lawyer.

In practice, detainees commonly state that they were not informed by the examining judge of their right to be assisted by a lawyer of their own choosing, or that the judge could appoint such legal counsel on their behalf, although official reports of such hearings generally suggest that the detainee was informed of these rights. According to some former detainees, they were asked by the examining judge if they were prepared to make a statement without their lawyer present and agreed, either because they were uncertain as to their rights or feared that they would otherwise be returned to the custody of the DRS. Provisions for legal aid to those who cannot afford a lawyer exist but are rarely used in practice.

Even if a family has already informed a lawyer of the arrest while a suspect is still held in *garde à vue*, the lawyer has no way of knowing when the detainee will be brought before the judicial authorities, especially as the 12-day time limit set by law is frequently breached in terrorism-related cases. Often, a detainee's lawyer may learn that his client has been presented before an examining judge after this has been done and, possibly, important admissions have been made.

It is particularly worrying that most defendants in terrorism-related cases in Algeria do not have any or adequate access to legal counsel during their detention or when they are first brought before an examining judge, especially having regard to the serious nature of the charges and penalties in such cases. As the Committee has recognised in its General Comment, access to independent legal counsel is both an important safeguard against torture and other ill-treatment, and essential in giving effect to the right to challenge the legality of detention.

*Case of Mourad Ikhlef*

Mourad Ikhlef, an Algerian refugee in Canada, was arrested in 2001 in Montreal and forcibly returned from Canada to Algeria in 2003, due to his alleged links with another Algerian convicted of terrorist-related activities. Mourad Ikhlef had been sentenced to life imprisonment in Algeria in 1993 after being convicted in absentia of “membership of a terrorist group operating in Algeria and abroad”. When returned to Algeria in 2002 he faced three separate trials: in the first, he was retried for the offence of which he had been convicted and sentenced in absentia in 1993 absentia, and acquitted; in the second, he was convicted on charges of “membership of a terrorist group operating abroad aiming to harm the interests of Algeria” and sentenced to seven years in prison. He is reported to have been convicted solely on the basis of statements he made held incommunicado in the custody of the DRS. The third trial, scheduled to commence on 16 April 2008, is described below.

Upon arrival in Algiers following his forcible return from Canada in 2003, Mourad Ikhlef was arrested and detained by the DRS for 10 days, and said that during this time he was placed under duress and insulted. The judicial authorities informed his lawyer that he was being held by the DRS but would not disclose his place of detention or other details, while the police told his family that they were not holding him and did not know where he was.

However, lawyers acting for Mourad Ikhlef thought they recognized him when he was taken to court by DRS officers on 10 March 2003 and presented to the examining judge. His lawyers had informed court officials of their presence and were outside the court room, but they were refused access by the examining judge and a court official, apparently at the request of the DRS officers. Subsequently, the lawyers sought to annul the minutes of the hearing before the examining judge because Mourad Ikhlef had appeared without legal counsel, in breach of the Code of Criminal Procedure, but their application was rejected on the grounds that, according to the court, he had expressly renounced his right to being assisted by a lawyer. Mourad Ikhlef, however, states that was not informed of his right to legal counsel and was too afraid to insist on the presence of a lawyer.

On 26 March 2006 he was released and told that all judicial proceedings against him would be stopped in the context of “national reconciliation” measures. Then, a week later he was re-arrested. On 9 April, the Minister of Justice Tayeb Belaiz was quoted as saying in the press that Mourad Ikhlef should not have benefited from “national reconciliation” measures because of his alleged involvement in planning attacks with explosives. On 21 November 2006, the UN Working Group on Arbitrary Detention adopted the opinion that the detention

of Mourad Ikhlef is arbitrary as it is in violation of article 14 of the ICCPR.<sup>12</sup> Mourad Ikhlef, together with Abdelmadjid Dahoumene and Adel Boumezbeur, are due to stand trial on 16 April 2008 for their alleged links to another Algerian who has been convicted of terrorism-related activities in the United States of America.

### ***Secret places of detention***

Detainees held as terrorism suspects appear routinely to be held in facilities which are not officially recognized places of detention. These are mostly barracks operated by or under the control of the DRS, with the Antar barracks in the Hydra district of Algiers most frequently used.<sup>13</sup> These barracks are situated in an area surrounded by forest, concealed from public view and not accessible to the public.

Detainees are generally transported to these barracks in unmarked cars and are made to lie or bend down as they approach to prevent them seeing where they are being taken. Likewise, detainees are not allowed to see their surroundings when they are being transferred out of the barracks. One told Amnesty International that he was blindfolded with rubber tubing whenever he was taken to and from the barracks and between his cell and the interrogation room. As a result of these measures, some former detainees say they never knew they were being held for the duration of their detention, even if it lasted for several months.

As stated above, detainees' families are not informed of their whereabouts or permitted access to them at their place of detention. When they enquire with the police or gendarmerie, they are generally told either that the person is not in detention or that he is being detained by the DRS, but given no further information. In no case known to Amnesty International, have the judicial authorities or officers belonging to the police or gendarmerie directed families to the Antar barracks, though it was later revealed their relatives had been held there at the time of their inquiry.

In rare cases, when detainees have been held in DRS barracks outside of Algiers, relatives have gone to the barracks on their own initiative and been able to obtain oral confirmation from DRS personnel that their relative was being held there, but never full official acknowledgement as required by international law. In such cases, families have not been allowed to have access or to communicate with the detainee. Consequently, the situation of these detainees too is that they are held in an unofficial place of detention and with no contact with the outside world, in violation of international law, including the Convention.

The DRS practice of holding detainees incommunicado at secret or undisclosed locations exposes the detainee to increased risk of torture or other ill-treatment; prolonged incommunicado detention in a secret location has been held to amount to torture or other

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<sup>12</sup> Opinion No. 38/2006 (Algérie)

<sup>13</sup> In some reports, the barracks are said to be in the neighbouring Ben Aknoun district of Algiers. It appears that the barracks are situated on the border with Ben Aknoun, but in the administrative district of Hydra, although Amnesty International has not been able to confirm this.

cruel, inhuman or degrading treatment. Where such detention is followed by a refusal to acknowledge the detention, or to reveal the fate or whereabouts of the person, thereby placing them outside the protection of the law, it constitutes an enforced disappearance. The effects of an enforced disappearance on family members can itself constitute a separate violation of the prohibition of cruel, inhuman or degrading treatment.

*Case of Mohamed Rahmouni*

Mohamed Rahmouni was arrested in the morning of 18 July 2007 by three security forces officers in plain clothes, at a bus stop near his home in the Algiers district of Bourouba. On 24 July, security forces officers searched his home. On 29 July, they came back and asked his family to sign a declaration saying that the security forces had found the keys of a truck and a Mercedes car during their search. The family refused, saying that they owned no such vehicles.

The family filed a complaint with the judicial authorities on the grounds that Mohamed Rahmouni was being arbitrarily detained. On 18 August, his mother was called to the office of the judicial police in Bourouba, where she was apparently asked why the family had filed a complaint and was told that her son was being treated well by the DRS, though she was not permitted to see him. In October 2007, she was told by the police in Bourouba that Mohamed Rahmouni was being detained in a prison in Blida, south of Algiers; guards at Blida military prison had initially denied that he was there but acknowledged holding him on 26 January 2008 after his mother made a further inquiry.

Mohamed Rahmouni has not been allowed visits by his family nor phone calls, and is reported to be facing trial on terrorism charges before a military court in Blida, rather than an ordinary criminal court. His lawyer has not been permitted to visit him or to have access to his case file.

### **Visiting places of detention**

In its General Comment no. 2, the Committee also highlighted “the need” for state authorities “to establish impartial mechanisms for inspecting and visiting places of detention and confinement” as a means of safeguarding against torture or other ill-treatment.

Article 52 of Algeria's Code of Criminal Procedure provides that all places in which detainees are held in *garde à vue* may be inspected at any time by the prosecutor in order to ensure that they satisfy the guarantees provided under Algerian law. However, as far as Amnesty International is aware, the barracks used by the DRS to hold and interrogate suspects are never subject to such inspections. In May 2005, Ministry of Justice officials told a visiting Amnesty International delegation that all detention facilities were open to inspection by prosecutors, including detention facilities used by the DRS, but they were unable to provide details indicating that such visits had been carried out to DRS barracks.

Former detainees have told Amnesty International that there were no inspection visits by the public prosecutor when they were being held at DRS barracks, and human rights lawyers have also stated that they are unaware of any such visits having been made.

The Algerian authorities's use of secret detention facilities was recently cited also in a report on the involvement of European states in "renditions" submitted to the Council of Europe, where it is stated: "the transfer of other detainees on [the United States'] rendition circuit must have entailed detainees being transferred out of Kabul to alternative detention facilities in different countries ... drawing upon official flight data, the probable existence of secret detention facilities can be inferred in Algeria...".<sup>14</sup>

### ***Prolonged detention without charge***

Algerian law allows for individuals suspected of terrorist activity to be held without charge and without access to lawyers for prolonged periods. Amnesty International has received reports of torture and other ill-treatment of detainees during the first 12 days of detention. In addition, the time limits defined under Algerian law are frequently violated by the DRS.

The DRS sometimes hold suspects without charge or access to legal counsel for periods far longer than the 12-day limit prescribed by law. Such arbitrary detentions can be prolonged indefinitely, for months or even years. Sometimes detainees held in excess of the period of *garde à vue* are subjected to "house arrest". Detainees held by the DRS under such conditions, outside of the legal framework, are not able to challenge the lawfulness of their detention, as they have no access to judicial review until they are first brought to a judge, which may not be until months after their arrest.

Further existing safeguards under Algerian law designed to protect detainees who have not been charged are generally not respected by the DRS, meaning that the detainee's physical safety is put in grave danger as a result of the excessive time limit allowed for *garde à vue*.

#### *Case of Malik Medjnoun*

Malik Medjnoun, who was arrested on 28 September 1999, is still awaiting trial, more than eight years after his arrest.<sup>15</sup> In 2000, he was charged with participating in the killing of singer Lounes Matoub in 1998. His case was submitted to the Human Rights Committee which ruled in August 2006 that he should be immediately tried or released.<sup>16</sup> The Human Rights Committee also urged the Algerian authorities to open investigations into alleged violations of his human rights. Malik Medjnoun was held in secret detention for seven months after his arrest, during which time he was reportedly tortured.

### **Control orders**

In its memorandum it submitted to the Algerian President in April 2006, Amnesty International documented six cases in which detention exceeded by weeks or months the legal

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<sup>14</sup> *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states.* (Explanatory memorandum), Parliamentary Assembly of the Council of Europe Doc. 10957, 12 June 2006; Dick Marty, Rapporteur of the Committee on Legal Affairs Human Rights, para. 55.

<sup>15</sup>

<sup>16</sup> *Medjnoune v Algeria*, CCPR/C/87/D/1297/2004, 9 August 2006.

limit of *garde à vue*. In four of these cases, including the cases of M'hamed Benyamina, and Mohamed Harizi, who was held in secret detention for over two years, detainees were formally placed under control orders by the Ministry of the Interior.<sup>17</sup>

Control orders require an individual to remain at a fixed place of residence and are supposed to be an alternative to imprisonment or detention.<sup>18</sup> However, the orders only state that the individual is not allowed to leave the confines of the province of Algiers and do not specify the address of residence or the duration of the measure. Considering that in all cases known to Amnesty International the individuals were already being detained in barracks of the military intelligence agency, it appears that the measure is being used in an attempt to conceal grave breaches by the DRS of Algerian and international law beneath a superficial legal cover that does not comply with international human rights standards.

*Case of Mohamed Fatmia*

Mohamed Fatmia, a bricklayer, was arrested in the morning of 6 June 2007 by plainclothes security forces officers while he was working on a building site in the Ain El Kerma area of Algiers. His manager, who was arrested with him, was released that evening. Mohamed Fatmia's family enquired about him at several Algiers police stations, but were told at each of them that the police did not know of him. Three other men who were arrested around the same time in connection with the same case were presented before the judicial authorities after some 12 days in custody. They had been held by the DRS and were allegedly tortured in their custody.

On 18 November 2007, Mohamed Fatmia was presented before a judge and remanded in custody in El Harrach prison, where he is allowed visits. Prior to this, he is reported to have been detained by the DRS at the Antar barracks. He was reportedly ill-treated during the first 12 days of detention before being placed under a control order.

### **Judicial review of arrest**

In General Comment no. 2, the Committee also highlights, as an effective preventive measure required by article 2, "the availability to detainees ... of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and to challenge the legality of their detention or treatment." The requirement to promptly bring persons detained on grounds related to conduct that is "criminal" in nature before an impartial and independent judicial authority is a requirement of international human rights law

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<sup>17</sup> See *Algeria: Torture in the "War on Terror" – a Memorandum to the Algerian President* (April 2006, AI index MDE 28/004/2006).

<sup>18</sup> The control orders are issued with reference to special powers attributed to the Minister of the Interior in the context of the state of emergency, in force since 1992. Article 6.4 of the decree on the state of emergency empowers the Minister of the Interior to place individuals under control orders requiring them to remain at a fixed address if their activities are considered to be "harmful to public order". No details concerning the practical application of this provision are provided in the decree. Presidential Decree No. 92/44, published in the Algerian official bulletin (*Journal Officiel*) of 9 February 1992.

and recognised as an indispensable measure for the prevention of torture and other ill-treatment.

As stated above, under Article 51 of Algeria's Code of Criminal Procedure, judicial police are empowered to hold suspects for a maximum of 48 hours in *garde à vue*, and then either charge them or release them. However, this 48 hour limit is extended to four days if the detainee is held on suspicion of "undermining the security of the state", and may be extended up to a maximum of 12 days on the written authorization of the public prosecutor, if the suspect is detained on allegations of "terrorist or subversive acts". Article 51 of the Code of Criminal Procedure stipulates that, whenever a person is taken into *garde à vue*, the officer of the judicial police has to immediately inform the public prosecutor and provide him with a report on the reasons for the detention. In addition, Article 51 stipulates that any detention without charge beyond four days has to be authorized in writing by the public prosecutor.

In practice, there appears to be no systematic judicial review of *garde à vue* detentions of those held by the DRS. Families and lawyers who have sought information from the public prosecutor about detainees held by the DRS have received no official confirmation of their detention or information as to the grounds arrest, indicating that the judicial authorities may not systematically be informed of arrests and detentions by the DRS, or else are unwilling to disclose information about such arrests. It appears, consequently, that there is no effective oversight by the public prosecutor of detentions by the DRS, contrary to the requirements of Article 51 of the Criminal Procedure Code.

## **Torture facilitated by counter-terrorism measures**

### ***Broad definition of terrorism incorporated from emergency laws***

Algerian law retains a broad definition of terrorism, which was initially introduced under emergency legislation in 1992 and later incorporated into the Penal Code. Some of these emergency measures violate international standards and have directly contributed to torture, and other cruel, inhuman and degrading treatment in detention. The definition of terrorist offences is so broad as to encompass the criminalization of acts which constitute legitimate exercise of civil and political rights, and the increased arrest and detention powers applicable in cases involving alleged terrorism are used against a climate of impunity for law enforcement officials engaged in the protection of national security.

According to Article 87 *bis* of the Penal Code, terrorism is defined to include offences liable to threaten state security, territorial integrity and the normal functioning of institutions by acts such as endangering life or property; hindering freedom of movement; impeding public authorities; damaging national or republican symbols; harming the environment, means of communication or means of transport; impeding the functioning of public institutions; and hindering free exercise of religion and public freedoms. These broadly framed provisions have been interpreted by the authorities or by the courts to include the peaceful exercise of civil and political rights.

Under the framework of the state of emergency, the authorities also adopted specific emergency laws, which were incorporated virtually in their entirety into the Penal Code and the Criminal Procedure Code in 1995. These measures have increased the scope of the death penalty, lowered the age of criminal responsibility to 16 years, and extended the period of pre-arraignment detention in relevant cases from two to 12 days.

### ***Sweeping powers of the DRS***

The officers and personnel of the DRS are members of the military and, as such, operate under the authority of the senior army command and the Minister of Defence. Except for the period between 1990 and 1993, the Algerian President has acted as Minister of Defence, including the current President, Abdelaziz Bouteflika.

According to Algerian law, DRS personnel can exercise the role of judicial police, a function otherwise mainly exercised by police and gendarmerie. Officers of the judicial police are endowed with powers to open police investigations, arrest suspects, and detain them for questioning for a fixed period of time, *garde à vue*, 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. By law, officers of military security services who are entitled to exercise these functions have to be appointed by joint order of the Ministry of Defence and the Ministry of Justice.<sup>19</sup> However, no such orders concerning officers of the DRS have been published in the Algerian official journal since the service was set up in 1990. In any event, such officials do not have the institutional and practical qualities of independence and impartiality to the degree required by international human rights for judicial oversight of detention.

The DRS plays a major role in investigating alleged terrorism-related offences. Terrorism-related arrests are either directly carried out by the DRS, or suspects are transferred to the custody of the DRS within the first few days of detention. Amnesty International has requested information from the Ministry of Justice to clarify the role of the DRS in the arrest and detention of suspects. During a meeting held in 2005, Ministry of Justice officials informed Amnesty International that the vast majority of terrorism-related cases were handled by the police, but Amnesty International has not seen evidence to support this assertion.

## **Criminalisation, Exclusion and Investigation**

### ***Criminalization of torture***

Amendments were introduced in the Penal Code in 2004 which explicitly make torture a crime. The definition, in Article 263 bis of the Algerian Penal Code, defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for any purpose whatsoever.”

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<sup>19</sup> Article 15 of the Code of Criminal Procedure

Article 263 ter establishes a penalty of between 5 and 10 years' imprisonment and a fine of between DA 100,000 and DA 500,000 for anyone who uses, incites or orders the torture of another person.

Article 263 quarter further provides: "Any public servant who uses, incites or orders the use of torture for the purpose of obtaining information or a confession, or for any other reason, shall be liable to a penalty of between 10 and 20 years' imprisonment and a fine of between DA 150,000 and DA 800,000. The sentence shall be life imprisonment for certain crimes when the torture precedes, accompanies or follows any crime other than murder. Any public servant who condones or fails to report the acts referred to in article 263 bis of this law shall be liable to a penalty of between 5 and 10 years' imprisonment and a fine of between DA 100,000 and DA 500,000."

These provisions, in theory, largely cover the terrain required by the definition of torture in article 1 of the Convention. The requirement to criminalise attempt, participation and complicity in torture also appear to be covered by articles 30 and 41-43 of the Penal Code.

However, other important requirements for criminalisation of torture under the Convention do not appear to have been met. For instance:

Articles 2(2) and 2(3) of the Convention require the elimination of certain justifications, including "necessity"-type justifications and "superior orders" justifications, in respect of torture. However, the Algerian Penal Code provides general justifications in article 39 and 40 for situations including "necessity" and certain "orders". Yet no provision appears to have been made to make these general justifications inapplicable in respect of crimes of torture. This appears to be directly in contravention of articles 2(2) and 2(3) of the Convention.

Articles 277-283 of the Penal Code provide for certain excuses that can significantly reduce the penalty applicable to crimes involving violence, apparently including torture, and would appear to for the reduction of a sentence for torture in such circumstances to a minimum of only six months and a maximum of only two years. Again, this appears to be inconsistent with article 4(2) of the Convention as it has been applied by the Committee.

As regards the requirements in articles 5 to 7 of the Convention that Algeria establish extraterritorial jurisdiction over acts of torture committed outside its territory, article 3 of the Penal Code refers this issue to the provisions of the Code of Procedure. Articles 590 and 591 establish general jurisdiction over crimes committed aboard ships and aircraft registered in Algeria, as required by article 5(1)(1) of the Convention. Article 582 of the 1999 Code of Procedure establishes general jurisdiction over crimes committed abroad by Algerian nationals, required by article 5(1)(2) of the Convention, but only where the person returns to Algeria. It is unclear therefore whether Algeria could seek extradition of one of its nationals for torture committed elsewhere, in the event the accused was not being prosecuted elsewhere, and therefore this section should be reviewed to ensure full compliance with the requirements of the Convention.

However, the combined effect of articles 5(2), 7 and 8 of the Convention is that States Parties must establish jurisdiction over acts of torture committed outside their territory, by a person of

any nationality, where the person subsequently comes to the State Party's territory and the State Party does not extradite him to another State. This means Algeria must establish jurisdiction over *any* act of torture – including even acts of torture committed by non-Algerians, outside Algerian territory, against non-Algerians – where the perpetrator subsequently enters Algerian territory (i.e. even if the presence of the accused torturer is the only link to Algeria). Algeria must provide itself with jurisdiction to prosecute such a person in the event he or she is not extradited to another state that will prosecute him. This jurisdiction does not seem to have been provided for in Algerian law and is required in order to comply with these obligations under the Convention against Torture.

Furthermore, criminalisation in law is of little importance unless the law is enforced in particular cases. Amnesty International is not aware of any case where a DRS or other security officer has been prosecuted for alleged acts of torture or other ill-treatment, before or after the 2004 amendment.

### ***Exclusion of information obtained under torture***

As stated above, the purpose of torture and other ill-treatment in most cases reported to Amnesty International was largely to extract information or confessions from the detainees about activities of armed groups in Algeria, or about international terrorism. Some detainees were reportedly asked to give the names of other people alleged to have links with terrorism. Detainees were then usually forced to sign an interrogation report, which often contains their “confession” to involvement with armed groups or international terrorism.

Such interrogation reports, which detainees allege they are often made to sign without being allowed to read them, are commonly used as prosecution evidence in subsequent trials and often constitute the only evidence used to secure a conviction, although Article 215 of the Criminal Procedure Code states that interrogation reports of the judicial police do not constitute evidence and may only be used for information during judicial proceedings. In many cases, it is alleged that the information contained in such interrogation reports from the DRS was obtained through torture or other ill-treatment or duress, though the incommunicado nature of detention and the lack of judicial oversight of detention conditions of the DRS makes it difficult or impossible for the detainee to substantiate torture. In practice, examining judges and the courts rarely challenge the information contained in interrogation reports and tend to dismiss defendants' allegations of torture without any or adequate investigation. Further, Algeria law contains no prohibition against the use or admissibility of statements or confessions obtained under torture, as reflected by article 15 of the Convention.

### ***Investigation of allegations of torture or other ill-treatment***

In its General Comment no. 2, the Committee highlighted the need to provide detainees and others with “judicial and other remedies that will allow them to have their complaints promptly and impartially examined”. This also reflects articles 12 and 13 of the Convention, including: the obligation of officials to proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction; the right to complain to, and to have a case promptly and impartially examined by, its competent authorities; and the right of the complainant and witnesses to be protected

against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Amnesty International has received information on several cases where allegations of torture were made by detainees when they were presented for the first time to the examining judge in which the judges appeared to have routinely dismissed the allegations, without ordering any investigation. Further, when detainees have expressly requested a medical examination, such requests are also reported to have been dismissed by examining judges. In some cases, examining judges have reportedly stated that they were not competent to order an investigation, and in a few, a brief reference to the detainee's allegations has been included in the court documents. However, Amnesty International knows of no cases in which judges have ordered that a detainee be examined by a medical doctor to determine whether physical traces of torture or ill-treatment existed.

In some cases, detainees may also be unwilling to complain for fear of the DRS. However, the absence of a formal complaint is not a valid reason to justify the lack of investigations into allegations of torture and other ill-treatment. Article 12 of the Convention against Torture stipulates that states have a duty to investigate allegations of torture "wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction".

In its third periodic report to the Committee against Torture, the Algerian government describes the reports of torture during *garde à vue* as documented by human rights organizations as "not entirely false". However, the report goes on to say that "each time that violations have been brought to the attention of the competent authorities these have not remained unpunished, and the perpetrators have been sanctioned in the framework of the law."<sup>20</sup> In practice, however, detainees' allegations of torture and other ill-treatment in cases raised by Amnesty International were not adequately investigated and perpetrators were not held accountable.

In May 2000 officials in the Ministry of Justice informed a visiting Amnesty International delegation that between 1993 and February 2000, 348 members of the security services or state-armed militias had been brought to justice for what the authorities termed "excesses" in the course of duty. According to the officials, eight of the 348 were acquitted. The "excesses" included a variety of crimes such as threatening people with death, arbitrary detention, torture and ill-treatment of detainees and murder. However, no further details could be obtained concerning the identity of those prosecuted or the victims, the precise nature of the violations, the investigations carried out and the results obtained, or the trials in which these people were brought to justice.<sup>21</sup>

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<sup>20</sup> UN Document CAT/C/DZA/3, 10 February 2006, paras. 91-94.

<sup>21</sup> See *Algeria: truth and justice obscured by the shadow of impunity*, Amnesty International (November 2000, AI index: MDE 28/11/00). In this report, Amnesty International further states: "The authorities' insistence on maintaining the anonymity of prosecuted members of the security forces and state-armed militias is incompatible with the fact that the administration of justice is of public interest and that its transparency is essential if the Algerian people's confidence in it is to be restored. Moreover, there is no reason why prosecuted members of the security forces and state-armed militias should benefit from an anonymity from which other citizens sentenced in Algerian courts do not."

*Case of M'hamed Benyamina*

M'hamed Benyamina, an Algerian national residing in France, was arrested in Algeria in September 2005 and then detained at an undisclosed location without charge or trial, and without access to the outside world, for five months. He was denied access to legal counsel and to a court to challenge his detention, kept in conditions amounting to torture and cruel, inhuman and degrading treatment, and only allowed to speak to his interrogators during his five months of detention. His interrogators accused him of having participated in an international network sending Muslim fighters to Iraq and of plotting bomb attacks on the headquarters of the French counter-espionage services (Direction de la surveillance du territoire, DST), and Orly airport and the metro in Paris.

M'hamed Benyamina was first brought before an examining judge on 6 February 2006. He was not given access to a lawyer even at that time, and the judge reportedly failed to inform him of his right to legal counsel and to a medical examination. Despite complaining to the examining judge that he had been ill-treated and forced to sign the interrogation report without reading it, no investigation is known to have been opened into these allegations.

He was remanded in custody on charges of "belonging to a terrorist group operating abroad" and "joining a terrorist group operating in Algeria". He was released on 4 March 2006 in the context of "national reconciliation" measures. He was arrested again on 2 April and, after three days of secret detention by the DRS, transferred to prison. On 21 November 2006, the UN Working Group on Arbitrary Detention adopted the opinion that the detention of M'hamed Benyamina is arbitrary as it is in violation of article 14 of the ICCPR.<sup>22</sup> He was due to be brought to trial in July 2007, but the trial was postponed, as prison authorities apparently "forgot" to transfer him from prison to court.

In December 2007, M'hamed Benyamina was sentenced by a criminal court to three years imprisonment for belonging to a terrorist group abroad. He was said to have admitted before the court that he had travelled to Syria with the intention of going to Iraq and that he met a recruiter of foreign fighters in Syria. When M'hamed Benyamina's lawyer presented the court with the UN WGAD's opinion, the prosecutor accused him of tarnishing the reputation of Algeria. The defendant is serving his sentence and did not appeal the court's decision.

Due to the absence of a lawyer and intimidation of detainees prior to their appearance before the judicial authorities, detainees may remain silent in the face of statements contained in interrogation reports at the first hearing, even if they were signed under duress. If defendants declare at a later stage in the judicial process that they were subjected to torture or other ill-treatment, or that they had signed interrogation reports under duress, these claims are generally dismissed by the judges on the grounds that the defendant failed to make this allegation at the first hearing.

In virtually all cases known to Amnesty International in which detainees were later charged with terrorism-related activities, they have alleged that they were forced to sign or thumb-print

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<sup>22</sup> Opinion No.38/2006 (Algérie).

interrogation reports that they were not allowed to read before being taken to a judge. Some detainees allege that they signed such reports under threat of further torture or even execution, or that they were tortured or otherwise ill-treated to make them sign the reports. In some cases, detainees were told that they would be returned to the DRS if they should later deny statements in court. In some instances, papers signed or thumb-printed by detainees in DRS custody volunteer before that they have been treated well in detention and have not been subjected to torture or ill-treatment.

*Case of Abderhamane Mehalli*

Abderhamane Mehalli was arrested at his home in the Bachdjarah district of Algiers on 26 December 2006 by a group of plain-clothes security force officers, believed to include members of the DRS.<sup>23</sup> Abderhamane Mehalli's family made enquiries with the authorities about his whereabouts, but were given no information, except that the local police confirmed his arrest and said he had been handed over to the central police authority of Algiers; the latter, however, told his family that they had no record of him.

Abderhamane Mehalli was held for 11 days without any contact with the outside world, at an undisclosed location believed to be the DRS barracks in Algiers. On 6 January 2007, he was brought before an examining judge in Algiers and charged with belonging to a terrorist group, apologising for terrorism, and failing to denounce his brother for joining an Islamist armed group in 1993, after having contacts with him. In court Abderhamane Mehalli reportedly appeared to be in fragile health and distressed. When the judge asked him about the conditions he had been held in, he stated that he had been tortured but that he feared to say more for fear of being taken back to the DRS barracks.

Abderhamane Mehalli was accompanied by a lawyer when he appeared before the judge, but was not permitted time to consult with him beforehand. He is now awaiting trial in the prison of Serkadji.

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<sup>23</sup> Abderhamane Mehalli has been arrested on numerous occasions since 1993, when one of his brothers, Bedrane, joined an armed group during Algeria's decade-long internal conflict. In 1996 Abderhamane was sentenced to five years' imprisonment after being convicted of belonging to a terrorist group and refusing to cooperate with the authorities. Abderhamane said that he was tortured during questioning before his trial. After his release in 2001, Abderhamane Mehalli was arrested, briefly detained and questioned on two further occasions, in 2001 and 2005, during which he says he refused proposals that he collaborate with the authorities as an informer.

In June 1998, Abderhamane Mehalli's father, mother and two of his sisters were arrested by plain-clothes officers believed to belong to the DRS and taken into detention in a military barracks in Algiers, where they say they were tortured. The mother and sisters were released around a week later, but the father, Mohammed Mehalli, has still not been seen, and is believed to have died in custody as a result of torture.

## Threats to the Independence of Judges and Lawyers

An independent judiciary is vital to ensuring rule of law generally and including the investigation of alleged that torture and other ill-treatment by state agents. However, the current structure of the judiciary, including the lack of security of tenure of judges, makes the judiciary susceptible to interference from the government.

The Constitution affirms the independence of the judiciary in Articles 138, 147 and 148. Articles 147 and 148 specify that judges are protected against any form of pressure, and are subject only to the law. The Algerian Constitution also includes a separate part, entitled 'Control and Consultative Institutions, Chapter I Control.' The Constitution provides for a Constitutional Council to guarantee respect for the Constitution.

Legislation enacted in 1989 created the High Judicial Council (Conseil Supérieur de la Magistrature), composed of a majority of magistrates elected by their peers, and responsible for overseeing the career of magistrates. However, subsequent decrees have modified the composition of the High Judicial Council in favour of the Executive and curtailed the powers of the High Judicial Council, which has become an advisory rather than a decision-making body.

The security of tenure of judges and prosecutors is no longer guaranteed and is subject to the will of political organs. The judiciary in Algeria is highly dependant on the executive authority for career promotion. Security of tenure is an essential guarantee of the independence of the judiciary. Principle 12 of the UN Basic Principles on the Independence of the Judiciary states that judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists. The potential manipulation of magistrates by the executive authority also undermines the right of individuals to a fair trial, including by raising the risk that information obtained through torture perpetrated by the state agents will be admitted into proceedings.

## Judicial harassment of defence lawyers

Lawyers providing defence in sensitive cases, such as cases of persons suspected of links with armed groups in Algeria or international terrorism, or providing legal aid in "disappearance" cases, face harassment by the authorities.

### *Case of Amine Sidhoum*

Amine Sidhoum is a lawyer and a human rights defender who has defended, among others, people accused of terrorism-related offences, and has exposed systematic human rights violations in terrorism-related cases, including the widespread use of torture and the denial of fair trials, as well as the routine failure of the judicial authorities to investigate allegations of torture and other ill-treatment.

In 2006, Amine Sidhoum was charged with violating laws governing the organization and security of prisons, based on allegations by the prison authorities that he had passed items

to detainees without authorization. The items were business that he gave to one of his client. These activities were legal and carried out in the interest of assisting his clients. The charges against him were based on legal provisions which expressly ban the illegal transfer to detainees of “money, correspondence, medicine, or any other unauthorized object”.<sup>24</sup> Amine Sidhoum was acquitted in April 2007.

In May 2006, Amine Sidhoum was reportedly warned by an Algerian official that he risked a prison term of up to five years if he should give information on human rights in Algeria at the 39th Session of the African Commission on Human and People’s Rights held in Banjul, Gambia, apparently in allusion to Article 46 of Law 06-01 Implementing the Charter for Peace and National Reconciliation, which criminalizes debate about the role of state security forces in the internal conflict.

Amine Sidhoum received a suspended six month prison term and a fine of 20,000 dirhams (about USD 300) on 13 April 2008 in a separate case in which he was prosecuted on charges of bringing the judiciary into disrepute in connection with comments attributed to him in an interview in which he criticised the detention without trial of one of his clients for two and half years.<sup>25</sup>

### ***Impunity for serious human rights abuses committed during the internal conflict***

As the Committee emphasised in its General Comment no. 2, article 2(2) of the Convention makes clear that no exceptional circumstances whatsoever may be invoked to justify acts of torture, and article 2(3) further excludes superior orders as justification. The criminalisation provisions of the Convention and the right in article 13 to “redress and has an enforceable right to fair and adequate compensation” all underscore that any form of impunity in respect of torture or other ill-treatment is unacceptable. In its General Comment, the Committee further specified that “amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability.”<sup>26</sup>

The Algerian people have suffered grave and widespread violations and abuses of their human rights in the context of the internal conflict, including violations of the right not to be subjected to torture or other cruel, inhuman or degrading treatment. To date, however, the Algerian authorities have largely failed to investigate fully, independently and impartially these grave human rights violations and abuses. Impunity for past violations has been further

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<sup>24</sup> For further information, see *Algeria: Human rights lawyers threatened with imprisonment on trumped-up charges*, Amnesty International Public Statement (AI index: MDE 28/018/2006, 23 September 2006).

<sup>25</sup> See *Algeria: Guilty verdict against human rights lawyer undermines Algeria's commitment to human rights*, Amnesty International Public statement (AI index: MDE 28/002/2008, 14 April 2008)

<sup>26</sup> General Comment no. 2, paragraph 5.

entrenched with amnesty laws introduced in 2006 with the stated intention of bringing closure to the years of violence.<sup>27</sup>

Amnesty International fears that the 2006 “national reconciliation” measures may grant impunity to the security forces for human rights violations committed after the adoption of the laws. Article 45 of Law 06-01 of 27 February 2006 granting impunity to the security forces seems to give blanket amnesty from prosecution for officials who may have been involved in torture or other cruel, inhuman or degrading treatment. Moreover Article 46 of the Decree criminalizes criticism against the security forces in broad terms with up to five years’ imprisonment and may thus be interpreted as potentially penalizing legal complaints against state agents suspected of torture. Any provision thus restricting the right of victims to complain about torture or other ill-treatment would seem to be an outright contradiction of the express terms of the Convention.

During the period under review in this briefing, the Algerian authorities adopted two significant sets of amnesty measures: the first one was adopted in 1999-2000 and the second one in 2005-2006. Under the Civil Harmony Law (No. 99-08), members of armed groups who surrendered to the authorities within six months from the date the legislation was passed and who had not committed or participating in killing, raping, causing permanent disability or placing bombs in public places were exempt from prosecution. Those who had committed such crimes were to receive reduced sentences, which would be further reduced for those surrendering within three months. The same measures applied to those who had been convicted of such crimes or who were awaiting trial on such charges.

Using Article 41 of the Civil Harmony Law, President Bouteflika passed Presidential Decree no 2000-03 on 10 January 2000 granting blanket immunity from judicial prosecution to “*the persons who belonged to organizations which decided voluntarily and spontaneously to put an end to acts of violence and which put themselves at the full disposal of the state and whose names are appended to the original of this decree*”. No appendix containing the names of the amnesty’s beneficiaries has been published to date.

The Algerian authorities introduced another set of blanket amnesty measures in 2006, as part of their policy of “peace and national reconciliation”, with the stated aim of turning the page on the conflict. The Decree Implementing the Charter for Peace and National Reconciliation (Law 06-01), adopted on 28 February 2006, declared that any complaint against the security forces, and those who acted in conjunction with them, would be inadmissible in courts, so conferring complete immunity for the perpetrators of thousands of extra-judicial executions, enforced disappearances and widespread torture. Moreover, the same Decree threatened with imprisonment those who speak out about abuses by the security forces.

The Decree also widened the scope of measures adopted in 1999 and 2000, granting exemption from prosecution to members of armed groups who surrendered to the authorities within a stipulated six month period or were in prison and who were not responsible for “acts of collective massacres, rape, or the use of explosives in public places”, stating that this served to end fighting by armed groups. The Decree provides insufficient safeguards to ensure

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that those who have committed serious crimes, for example killings of civilians or torture, will be prosecuted. According to official statements, up to 300 armed group members had surrendered by the deadline, but no details have been provided so far as to how many were exempted from prosecution and by what process. Moreover, further official statements have suggested that those who give themselves up even after the six-month deadline would benefit from similar measures.<sup>28</sup>

Law 06-01 of 27 February 2006 implementing the Charter provides sweeping impunity for state agents for any of their actions, and for state armed militia.

Article 45 states:

*“No legal proceedings may be initiated against an individual or a collective entity, belonging to any component whatsoever of the defence and security forces of the Republic, for actions conducted for the purpose of protecting persons and property, safeguarding the nation or preserving the institutions of the Democratic and Popular Republic of Algeria. The competent judicial authorities are to summarily dismiss all accusations or complaints.”*

Article 44 states:

*“Citizens who, through their involvement or their determination, contributed to saving Algeria and protecting the nation's institutions, performed acts of patriotism.”*

This article, coupled with Article 45 quoted above, suggests that state-armed militia, believed to have also committed grave and widespread human rights violations, are also exempt from any prosecution. Article 45 bars victims and their relatives from seeking justice in Algeria and obtaining judicial remedies and prevents the truth about human rights abuses from emerging through Algerian courts.

Moreover, Article 46 states:

*“Anyone who, by speech, writing, or any other act, uses or exploits the wounds of the National Tragedy to harm the institutions of the Democratic and Popular Republic of Algeria, to weaken the state, or to undermine the good reputation of its agents who honorably served it, or to tarnish the image of Algeria internationally, shall be punished by three to five years in prison and a fine of 250,000 to 500,000 dinars.”*

According to the Algerian delegation to the UN Human Rights Committee session in October 2007, some 2,500 detainees benefited from amnesty measures under the Decree. However, their names and the process for determining their eligibility have not been published. According to Amnesty International's information, some detainees eligible for release under the Decree are still detained, while others were released although they were not entitled to be released under the Decree, suggesting arbitrariness in the application of the Decree. Some families of people who were killed by armed groups have since told Amnesty International that

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<sup>28</sup> Amnesty International was told by Algerian government officials in May 2000 that prosecution had been initiated against some 350 people who had surrendered under this law (and the total number of whom, according to the same sources, is reported to be some 4,500). However, to date the authorities have not provided any exact figures concerning how many surrendered under this law, how many were prosecuted, and how many of the latter were acquitted or convicted and for what crimes.

those who are responsible for the killing of their relatives were exempted from prosecution under either the Civil Harmony law or the presidential amnesty of 10 January 2000. This has led Amnesty International to believe that full and thorough investigations have not been carried out to establish what crimes surrendering armed group members might or might not have committed.<sup>29</sup>

### ***Enforced disappearances***

According to the recently-adopted International Convention for the Protection of All Persons from Enforced Disappearance, an enforced disappearance is the “arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

As recognised in the General Assembly’s 1992 Declaration on the Protection of all Persons from Enforced Disappearance, article 1(2): “Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia , the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.”<sup>30</sup>

On 6 February 2007, Algeria signed the new International Convention for the Protection of All Persons from Enforced Disappearance. However, only very few cases of "disappearance", torture and other ill-treatment, or extrajudicial execution, have reached the courts, nor has the state taken adequate account of the “disappeared” and provided remedies to the victims’ families. To date, Amnesty International is not aware of any case of “disappearance” that has been clarified in a satisfactory manner by the Algerian authorities. There is no publicly available list of victims of enforced disappearance, and too often the actions of the state party in relation to “disappearances” have rather obstructed than assisted the efforts of families to retrace their loved ones and to obtain an effective remedy. Moreover, the Algerian authorities have consistently denied state involvement in enforced disappearances, notwithstanding several recent decisions of the Human Rights Committee finding the state responsible in respect of particular cases.<sup>31</sup>

Enforced disappearances, numbering into the thousands, were one of the grimmest features of the internal conflict in Algeria. The families of those forcibly “disappeared” have taken many steps to find out their fate. Many contacted the police, gendarmerie and other security forces to try and obtain information as to where their relative was be detained and why. Many have

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<sup>29</sup> For more information, see *Algeria: Truth and justice obscured by the shadow of impunity*, Amnesty International (AI index: MDE 28/11/00, November 2000).

<sup>30</sup> Adopted by General Assembly resolution 47/133 of 18 December 1992

<sup>31</sup> See for example *Bousroual (on behalf of Salah Saker) v Algeria*, CCPR/C/86/D/992/2001, 24 April 2006. See also *Kimouche v Algeria*, CCPR/C/90/D/1328/2004, 16 August 2007, paras. 7.6 and 7.7.

presented their case to the judicial authorities, demanding that investigations be opened into the enforced disappearance of their loved ones or filed complaints to the courts on the grounds of arbitrary detention. However, the justice system has largely failed to provide satisfactory answers to these families. Either families have received no response from the courts since their complaint was made, or there has been no progress in investigations, or complaints were closed on the grounds of lack of information or evidence. Families of the “disappeared” have reported that those in charge of the investigation rarely summoned eyewitnesses to the arrest of their loved ones, and seemed not to consider information which could have helped trace their relatives.

Some families have also received information, apparently originating from the security forces, through the judicial authorities or the official human rights body, that their loved ones were killed while in the ranks of armed groups, but without any adequate explanation as to how a person known to have been in the custody of state agents could then enter the ranks of an armed group or escaped from custody, but, again, without providing relevant details. Sometimes families have received contradictory information from different government authorities, containing discrepancies, for example, in the dates of arrest or detention provided.

Law 06-01 Implementing the National Charter on Peace and Reconciliation now explicitly prevent investigations into the conduct of the security forces and is a new, major impediment to the search for truth and justice of relatives of the “disappeared”. It proposes, however, measures to support families of “disappeared” persons, many of whom suffer the harsh social and economic consequences of the absence of a loved one, by providing financial compensation.

Law 06-01 of 27 February 2006 also introduces measures of compensation for victims of “disappearances”. Compensation payments are conditional on families obtaining from the judicial police a certificate confirming that their relative is missing, established “after searches for their whereabouts have been inconclusive”. They can then obtain a death certificate through an administrative ruling (according to Article 30 of the law, every person who has been missing and whose body has not been found after investigations through all legal means is declared dead). The administrative ruling of death should happen within two months of the demand of the families. The act certifying that the person is missing and the death certificate must be presented to the authorities by the families lodging a claim for compensation.

However, even these provisions raise further problems: many families have declared that they would not seek a death certificate, fearing that this would close the door to proper investigations into the fate of their loved ones and prevent them from obtaining the truth, which is as important or more important a remedy than compensation. It is unclear whether searches for the truth about the fate and whereabouts of disappeared persons, or claims for compensation for disappearance, are being deterred in practice by the apparent criminalisation of criticism of state authorities under articles 45 and 46 of the Law. The Law does not acknowledge state responsibility for the “disappearances” or the rights of the relatives of the “disappeared”, but rather only speaks of the right to compensation of relatives as outlined.

Although the Algerian media have reported that compensation funds have started to be distributed during 2007, there is no publicly available information on the number of families who have so far benefited from compensation. The head of the legal committee in charge of implementing the 2006 Decree said that, regarding the issue of “disappearances,” there are two lists: one which lists the cases of 6145 “disappeared,” and the other one which lists the cases of 17.000 “terrorists” killed. These lists are not known to have been made public. Given that some relatives of the “disappeared” have sometimes been told by the authorities that their loved ones were killed in clashes between the security forces and armed groups, or by armed groups, this has added further confusion as to who the authorities attach the responsibility for “disappearances”.

Amnesty International believes that compensation should never be a substitute for investigations into human rights violations and for bringing those responsible to justice. This is particularly so in respect of enforced disappearances, where knowledge of the fate and whereabouts of loved ones must lie at the heart of any remedy. The organization is concerned that genuine investigations have not been held and that other elements of reparation have yet to be addressed. Victims of “disappearance” and their relatives should have access to full redress, which may include restitution (of, for example, lost livelihoods and property); compensation; rehabilitation; satisfaction (such as restoration of their dignity and reputation and a public acknowledgment of the harm they have suffered); and guarantees of non-repetition.

## **Violence against women**

### ***Victims of sexual violence at the hands of armed groups***

Hundreds of women have been raped by members of armed groups during the internal conflict. Some women were mutilated and killed after being raped, others were forced to stay with their abductors and forced to cook and clean for them. Some were able to escape, others were left behind by armed groups after being raped. Many suffer today the physical and mental trauma generated by such experience. Women victims of rape run the risk of becoming pregnant, contracting sexually transmitted diseases, and developing gynaecological problems. Women who have been subjected to sexual violence suffer moreover from the social stigma attached to rape and the possibility of being rejected by their husbands, relatives or community. As a result they rarely make official complaints or even prefer to keep their ordeal secret. Therefore, the extent to which sexual violence has been committed during the internal conflict in Algeria is not known.

The Algerian authorities have recognised that rape occurred during the internal conflict. Amnesty International welcomes the fact that the amnesty measures taken in 1999 and in 2006 exclude from amnesty members of armed groups responsible for rape. However, to Amnesty International’s knowledge, there has hardly been any prosecution of members of armed groups on charges of rape. Given the lack of information surrounding the application of the 2006 Decree, it is not known how many persons have been excluded from amnesty

measures on account of committing a rape, nor how many of those who have surrendered may have been brought to trial and prosecuted for rape.

The problem of unwanted pregnancies as a result of rape has received some attention in Algeria, in particular the issue of whether women pregnant as a result of rape could be allowed to abort. Seeking, undertaking and performing abortions are criminalized under articles 304 and 309 of the Algerian Penal Code.<sup>32</sup> Abortion is legally allowed in case the mother's life is threatened or her physiological and mental balance is gravely threatened, under article 308 of the Penal Code and article 72 of a 1985 law on the promotion and protection of health.<sup>33</sup> In 1998, the High Islamic Council, a state institution, in response to such question, ruled in a fatwa (case law) that women who had been raped could, in extreme cases where their life was under serious threat and this had been medically established, have access to abortion. The ruling also affirmed that women who had been raped had not lost their honour and that they should not be blamed or punished for having been raped. The Ministry of Health reportedly issued instructions in 1998 to allow abortion for women pregnant as a result of rape by armed groups under certain conditions. Amnesty International has not been able to obtain a copy of these instructions. Women's organisations members of the Wassila Network in Algeria, however, have denounced the lack of implementation of legal and religious provisions allowing abortion for survivors of rape by armed groups. There is no official information as to how many women may have benefited from such measures, however restrictive they are.

Women's organizations have also complained that victims of rape by members of armed groups do not benefit from rehabilitation provided by the government, including medical, psychological and other post-traumatic counselling, nor from compensation which other victims of armed groups have been able to receive. Measures of compensation adopted in favour of the "victims of terrorism" do not specifically mention survivors of rape, nor do they contain specific provisions to support their particular needs and rehabilitation. Non-governmental organizations offer medical and psychological assistance to a limited number of individuals, but do not have adequate resources to provide it to the hundreds of women and girls who need help. The lack of such provisions is especially worrying in a society such as Algeria's, where victims of rape are forced to deal not only with the trauma caused by the crime, but also with the social taboos, shame and stigma attached to this sensitive issue. Many of the women who have been victims of abduction and rape by armed groups live in rural and socially conservative areas of the country, compounding the problem. Others, who have been rejected by their families or have left their homes for fear of stigmatisation, are homeless and jobless, in a society where the employment of women remains difficult.

### ***Female relatives of the forcibly disappeared***

Of the thousands of "disappearances" in Algeria on which Amnesty International has received information, some 99 per cent are men. Their arrest and "disappearance" have left several thousand relatives, the majority of them women, suffering the agony of not knowing the fate of a husband, father, son or brother and, in some cases, of more than one member of the family.

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<sup>32</sup> Both women seeking abortion and providers of abortion services are criminalized.

<sup>33</sup> Law No.85-05, adopted on 16/12/1985.

By failing to take meaningful steps to investigate “disappearances” and by denying relatives the truth, Algeria is failing to provide adequate remedies to female relatives of the disappeared, who are disproportionately affected.

In 2006, the Human Rights Committee, in its first ruling on two cases of enforced disappearance in Algeria, stated that the Algerian authorities had failed to protect the life and security of Salah Saker and Riad Boucherf. Salah Saker, a teacher and member of the Salvation Islamic Front, banned in 1992, “disappeared” after his arrest by members of the security forces on 29 May 1994. Riad Boucherf “disappeared” in 1995. Their relatives had been trying to obtain information about their fate for many years and filed complaints to the Algerian courts, which had made no progress. The Algerian authorities have yet to investigate independently and thoroughly the two cases, despite the recommendations of the Human Rights Committee. The Human Rights Committee also stated that the anguish of their relatives caused by the uncertainty surrounding the fate of Salah Saker and Riad Boucherf could constitute a violation of their right not to be subjected to torture or other ill-treatment.<sup>34</sup>

In addition, relatives of the forcibly disappeared also face harassment for demanding the truth.

Louisa Saker, the wife of Salah Saker has been seeking to uncover the truth about his fate since his enforced disappearance. In 2008, Louisa Saker was tried in Constantine over charges of disturbing public order, organizing an unauthorized march, “outrage to civil servants with use of weapons” and theft. The charges relate to her participation in a peaceful demonstration in 2004 by families of victims of enforced disappearance. After the demonstration she was arrested, beaten up by the police and forced to sign a statement that she would not participate in such protests again.

On 26 March 2008, Louisa Saker was found guilty of participating in a non-authorized march and sentenced to a fine of 20,000 dinars (about USD 300). The date of the appeal trial is yet to be scheduled.

### ***Domestic violence***

Domestic violence is thought to be prevalent in Algeria. The government has acknowledged not only that violence in the family is increasingly a problem, but also the absence of specific legislation protecting women from violence and of statistics on the prevalence of the problem. A major study on violence against women in Algeria was conducted between December 2002 and June 2003 by the National Institute for Public Health (Institut National de Santé Publique, INSP) and published in 2005,<sup>35</sup> with the collaboration of health, justice, security and social professionals and intergovernmental and national non-governmental organizations working on violence against women. According to the study, domestic violence, in particular acts of violence by a husband against his wife represented the majority of cases of violence against women in the country. The study made important recommendations, including on the

<sup>34</sup> Human Rights Committee, communication No. 1196/2003, *Boucherf v. Algeria*, para. 9.7; communication No. 992/2001, *Saker v. Algeria*, para. 9.8.

<sup>35</sup> Available at : [http://www.ands.dz/insp/INSP\\_Rapport\\_Violence\\_Femmes.pdf](http://www.ands.dz/insp/INSP_Rapport_Violence_Femmes.pdf)

training of state officials and personnel coming into contact with domestic violence, on the creation and reinforcement of centres to shelter victims of domestic violence, on national information and prevention measures, and on the need for legal reforms.

### ***Laws against violence against women***

Although both physical and psychological violence are banned explicitly in Article 34 of Algeria's Constitution, Algeria does not have legislation that adequately addresses violence against women, as was noted in CEDAW's concluding observations of 1999.<sup>36</sup> Article 336 of the Penal Code makes rape a crime punishable by five to 10 years' imprisonment but does not define rape. Other forms of sexual violence are not defined under the Penal Code, although they could be considered under indecent assaults ("*attentat à la pudeur*") codified in Articles 334 and 335. Medical evidence is crucial to prove rape in a court of law, and women subjected to rape should be examined by a forensic doctor, according to the law. The Algerian authorities say that evidence given by medical doctors other than forensic may be considered too in practice. Other evidence to support an accusation of rape can be provided by witnesses, although this is unlikely to happen in most cases.

There are no specific legal provisions about domestic violence, although now women can divorce their husband if they are violent towards them (see the Family Code). There is no explicit legal provision regarding marital rape. Article 264 of the Penal Code provides penalties for violent acts against another person which lead to illness or inability to work for more than 15 days. There are less severe penalties in case the threshold of 15 days' inability to work is not met. Women need a medical certificate by a forensic doctor to prove this in court. Article 267 allows for more severe penalties when a person commits violent acts against his or her parents. Article 272 also allows for more severe penalties when a parent or a guardian commits violent acts against a child for whom he or she has responsibility. Article 337 makes incest a crime.

Many women are unaware of legal provisions that could give them some form of redress and protection in case of violence. Women must first make a complaint to the judicial authorities in order to benefit from legal aid and legal protection. As highlighted by the Special Rapporteur on Violence Against Women in her recent report on Algeria, "[o]nly a small proportion of all violence committed against women in the family is reported to the authorities. The prevalence rates found in the 2006 National Survey would indicate that there are about 500,000 women in Algeria who experience physical abuse on a regular or even daily basis. This figure sharply contrasts with the comparatively low number of cases registered by the judicial authorities. According to information received from the Government, 17,383 cases of physical abuse of women reached the authorities during the course of 2006."<sup>37</sup>

In order to improve the protection of women from domestic violence in Algeria, there needs to be, on top of legal reforms that explicitly make all forms of violence against women criminal offences, serious programmes to raise awareness and train professionals who may come into contact with women suffering from violence. These include state officials, law enforcement

<sup>36</sup> CEDAW, *Concluding Observations: Algeria*, *supra* note 18, paras. 79-80.

<sup>37</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Addendum: MISSION TO ALGERIA UN. Doc. A/HRC/7/6/Add.2.doc (12 February 2008), para. 68.

agencies and judicial institutions, as well as the medical profession. Programmes to provide psychological help to women suffering from domestic violence need to be created. Non-governmental organisations, such as *SOS Femmes en Détresse* in Algiers, provide shelter for women fleeing violence in their home, but these are not enough to support all the women in need of a place to stay when they escape violence.

### **Lack of protection for victims of domestic violence**

As highlighted above, Amnesty International is concerned at the inadequacy of existing legislation to punish perpetrators and to protect women who make complaints. In the absence of any other protection for woman from violence in the home the only legal protection is that of the Penal Code. According to Algerian lawyers use of the Penal Code is extremely rare. Women may be subjected to pressures from their husband, their husband's family, or their own family to drop the case. As a consequence, reports of violence in the family generally surface only if a woman needs to seek hospital treatment, or if she is thrown out of the house.

In the case of marital rape women face even more serious obstacles when it comes to reporting the crime, as they encounter both the difficulties experienced by victims of violence in the family and those encountered by victims of rape. In addition, they may have to deal with a lack of awareness among law-enforcement officers of marital rape as a crime. Amnesty International is not aware of a single case of successful prosecution of rape in marriage.

### **Lack of redress and care for victims of violence**

In Algeria, most women are apparently seen by a doctor if the assault is reported, but there are no state-run medical or psychological rehabilitation programmes to help women overcome the consequences of rape. There are no effective mechanisms for the provision of redress, including rehabilitation and compensation. Amnesty International is aware that a new draft law on health care is making explicit reference to the state's duty to provide medical and psychological care for women victims of violence and to facilitate their social reintegration.<sup>38</sup> However, the law is worded vaguely and unspecific with regard to the duties of the state. Such rehabilitation programmes are particularly needed in a society such as Algeria's, where victims of rape are forced to deal not only with the medical and psychological effects of the crime, but also with the social taboos, shame and stigma attached to this sensitive issue. Psychologists who have worked with women who have survived sexual assault in Algeria report that the women feel abandoned and isolated. Their trauma is exacerbated if they do not know why they were targeted by their assailants.

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<sup>38</sup> Article 15 of the draft law of February 2003 published on <http://www.santemaghreb.com/algerie/loisanit.htm> states: "The state makes medical and psychological resources available in order to ease the suffering of women victims of violence and to facilitate their social reintegration. Violence against women is understood to include violence that causes them or is likely to cause them physical, sexual or psychological harm or suffering, and includes the threat of violence, coercion or the arbitrary deprivation of freedom, in public or in private."

As highlighted by the Special Rapporteur on Violence Against Women, police regularly fail to adequately respond to domestic violence cases, and often lax sentencing is imposed by judges in the rare cases where domestic violence reaches the court room.<sup>39</sup>

## Death Penalty

Amnesty International opposes the death penalty unconditionally in all situations as a violation of the right to life and the ultimate cruel, inhuman or degrading punishment. However, even expert bodies operating under instruments that do not expressly prohibit the death penalty recognize that the way in which the death penalty is carried out can constitute torture or other cruel, inhuman or degrading treatment or punishment, and that its imposition after an unfair trial (including one in which information obtained by torture or other ill-treatment is admitted, or where access to legal counsel is denied) constitutes a grave violation of the right to life,

The General Assembly adopted in December 2007 a resolution calling on all states to impose a moratorium on executions.<sup>40</sup> The resolution calls on states that still maintain the death penalty to respect international standards that provide safeguards guaranteeing the protection

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<sup>39</sup> See SR VAW, at paras 53-54 (police treatment of domestic violence), 67-68 (lax sentencing):

53. The police apply different standards to domestic violence cases, even though Algerian law foresees that all forms of violent crime have to be pursued, regardless of whether the victim herself files a criminal complaint or not. Unless domestic violence has led to serious physical injuries, police will very often attempt to “reconcile” perpetrator and victim on the spot, rather than institute criminal proceedings. This strategy is prone to cause re-victimization since it undermines the deterrent function of the law and entrenches the imbalance of power between perpetrator and victim. Lawyers and women’s organizations also reported numerous cases in which police had actively pressured women to withdraw criminal complaints against husbands or other family members.

54. The authorities have attempted to improve the situation by seeking to ensure that female police officers are available in all police stations to register crimes against women. Some police districts have also begun to systematically collaborate with non-governmental organizations that assist victims. These are positive steps, but they cannot replace sustained gender-sensitive training to transform the attitude of the police corps as a whole. Moreover, disciplinary measures need to be taken whenever public officials abide by social norms of non-interference in family matters, rather than their legal obligations.

67. The conviction rate for physical abuse against women, as reported by the Government, appears to be very high: 14,016 out of 16,676 cases that reached the judicial authorities resulted in a conviction. However, many of my interlocutors have pointed out that lax sentencing in domestic violence cases discourages women from pursuing criminal complaints. The Penal Code foresees increased penalties for physical assault against parents or children. Yet, spousal abuse is only regarded as ordinary assault, even though these situations are also characterized by a close family relationship and unequal power between perpetrator and victim.

68. In judicial practice, perpetrators of spousal abuse are often only sentenced to suspended jail terms, monetary fines or only receive warnings. In the absence of mandatory offender treatment programmes or other alternatives to traditional means of penal justice, this is bound to encourage perpetrators and exacerbate violence.

<sup>40</sup> A/RES/62/149 (18 December 2007)

of the rights of those facing the death penalty, in particular the minimum standards as set out in 1984 by the Economic and Social Council (ECOSOC).<sup>41</sup>

Safeguard 5 of the ECOSOC resolution states: "Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings." The fair trial safeguards were reiterated and elaborated by the ECOSOC in 1989 and 1996,<sup>42</sup> as well as by the former UN Commission on Human Rights.<sup>43</sup>

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions too has emphasised that fair trial safeguards in death penalty cases must be implemented in all cases without exemption or discrimination,<sup>44</sup> and that "proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries, in accordance with the pertinent international legal instruments. All defendants facing the imposition of capital punishment must benefit from the services of a competent defence counsel at every stage of the proceedings. Defendants must be presumed innocent until their guilt has been proved beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence. In addition, all mitigating factors must be taken into account."<sup>45</sup>

The government has taken some steps towards the abolition of the death penalty. For instance it has introduced amendments limiting the number of offences punishable by death in the Penal Code in December 2006. The Algerian Parliament voted against the abolition of the death penalty.

Algerian legislation retains the death penalty for a wide range of offences, including terrorism-related offences specified under Article 87 of the Penal Code, although a *de facto* moratorium on executions has been observed by the authorities since 1993. Algerian courts continue to impose the death penalty. Many death sentences are imposed *in absentia*, mainly against suspected members of armed groups active in the country or those suspected of involvement in international terrorism and living abroad.

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<sup>41</sup> ECOSOC, "*Safeguards guaranteeing protection of the rights of those facing the death penalty*", E.S.C. res. 1984/50, annex, 1984 U.N. ESCOR Supp. (No. 1) at 33, U.N. Doc. E/1984/84 (1984).

<sup>42</sup> ECOSOC, "*Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*", Resolution 1989/64, adopted on 24 May 1989, UN Doc: E/1989/INF/7, 127 and *ts of those facing the death penalty*", ECOSOC Res. 1996/15, UN Doc. E/CN.15/1996/15 (1996).

<sup>43</sup> UN Commission on Human Rights, "*Resolution on the Death Penalty*", Resolution 2005/59, adopted 20 April 2005.

<sup>44</sup> *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur*, UN document E/CN.4/2001/9, 11 January 2001, para.86.

<sup>45</sup> *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur*, UN document E/CN.4/1997/60, 24 December 1996, para.81.

Emergency measures introduced under the framework of the state of emergency in 1992 lowered the age of criminal responsibility to 16 years. However, minors accused of terrorist or subversive offences are not sentenced to death and courts take into account their age. These children are often sent to centres for juvenile offenders.

Despite positive steps to restrict the application of the death penalty, hundreds of persons have been sentenced to death in the past years.

## **Non-refoulement and Treatment of Migrants**

Thousands of migrants are reportedly deported every year from Algeria. Press reports, citing police sources, indicate that some 35,000 migrants from 55 African and Arab countries have been arrested over the past six years and 32,000 of them deported. Amnesty International is concerned that, in many cases, the deportations are not conducted with adequate safeguards, including the possibility of appeal against the deportation orders, and that therefore they constitute collective expulsions. Under the Convention against Torture, no person may be transferred to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. In order for this provision to be effective, individuals must be able to raise such grounds in an established process and have the issue definitively determined *before* they are expelled. Collective expulsions and summary deportation procedures are therefore inconsistent with article 3 of the Convention.

There have been allegations of torture and other ill-treatment of irregular migrants by Algerian police in recent years, including reports of migrant women being subjected to sexual abuse by Algerian law enforcement officials. The reports indicate that such sexual abuse has occurred on several occasions in the last three years and that, in some cases, women have allegedly been subjected to gang-rape by members of the border police. Most recently, Amnesty International has received reports that three migrant women among those expelled from Morocco to Algeria on the night of 23-24 December 2006 were subjected to a body search and then raped by Algerian border police. These incidents allegedly occurred at the Algerian-Moroccan border near the Moroccan town of Oujda. No investigations into these reports are known to have been held.

Even persons who have been recognised as refugees by the office of the High Commission for Refugees in Algeria have been subjected to summary deportation and dumped at the Algerian frontier with other states, in situations which amount to cruel, inhuman or degrading treatment.

**Case:** *28 men, apparently of Congolese origin who had been granted refugee status by the UN High Commissioner for Refugees Office in Algeria, were taken for deportation by the Algerian authorities on 19 August 2007. The men had been held for months in a detention centre in Reggan, southern Algeria, waiting to be resettled in a third country. The decision to deport them was apparently taken after they were tried by a court on 16 August for entering Algeria illegally. They were not notified that they would be tried and were not afforded legal counsel during the trial.*

*The 28 men were taken on trucks all the way to the southern border with Mali. During the journey, they were given very little food and were handcuffed and held in detention centres each night. One of them was reported missing on arrival to the Malian border and his whereabouts are unknown. The 27 others were dumped at Tinzaouatene on the Malian border on 24 August, without food, water or medical aid. Tinzaouatene has recently become a zone of activity for a Malian “rebel” group and the refugees were unable to walk towards the nearest city because of insecurity. They were finally taken by truck to Bamako, the capital of Mali, where they were able to meet officials of the UN High Commissioner for Refugees.*