# ASYLUM AND IMMIGRATION TRIBUNAL

HS (Terrorist suspect – risk) Algeria CG [2008] UKAIT 00048

**THE IMMIGRATION ACTS**

Heard at: Field House Date of Hearing: 19 & 20 November 2007

Before:

Miss E Arfon-Jones DL, Deputy President of the Asylum and Immigration Tribunal
Senior Immigration Judge Mather

Between

HS

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellant: Ms F Webber, Counsel instructed by Hereward & Foster Solicitors
For the Respondent: Ms K Grange, Home Office Presenting Officer

*Where there are grounds for believing that a returnee may be suspected by the Algerian authorities of having been involved in terrorist activity abroad, he may be at real risk on return in the absence of specific assurances from the Algerian government and/or monitoring by the British Embassy in Algiers. The risk arises from the time that he may spend in the custody of the DRS (Département du Renseignment de la Securité ) while his background is investigated.*

## DETERMINATION AND REASONS

1. The appellant, born 13 February 1955, is a citizen of Algeria. He claims to have arrived in the United Kingdom in July 2000 when he was granted entry as a visitor, having been issued with a visit visa in Tunis on 12 July 2000. On 23 January 2001 the appellant claimed asylum after having been detained by the police as an overstayer.

2. The appellant claimed asylum on the basis that he feared persecution if returned to Algeria arising from death threats he had received from unknown persons. He

claimed that his involvement in establishing a new teaching union and the fact that he had taught English at an Algerian school had placed him in danger.

3. On 22 March 2001 the Secretary of State refused the appellant's claim for asylum and by a notice dated 30 March 2001 issued directions for his removal from the United Kingdom to Algeria. The appellant lodged a notice of appeal against those decisions additionally claiming that the United Kingdom would breach its obligations under the European Convention if he were removed to Algeria.

4. In September 2002 the appellant was arrested by the anti-terrorist branch of the Metropolitan police and was eventually convicted of conspiracy to defraud on 2 July 2004. He was sentenced to two years' imprisonment and recommended for deportation. That sentence was completed and he was subsequently detained under the Immigration Acts.

5. On 22 December 2004 the Immigration Appeal Tribunal accepted that the appellant and representative had not received the notice of the appeal hearing which had been dismissed in his absence on 3 February 2003. The remitted appeal was heard as a reconsideration appeal after the coming into being of the Asylum and Immigration Tribunal in April 2005. That reconsideration appeal was heard together with the appeal against the respondent's decision to deport the appellant following the court's recommendation.

6. Following a panel hearing at Taylor House on 21 September 2005, a single determination was promulgated covering both the reconsideration and the appeal against deportation on 16 February 2006 dismissing the appeal on both asylum and human rights grounds.

7. On 18 January 2007 the Court of Appeal allowed by consent an appeal against the dismissal of an asylum and human rights appeal and ordered a full de novo reconsideration of all the issues. Thus the matter came before us at Field House on 19 November 2007. The hearing lasted for two days although no oral evidence was heard because facts relating to the appellant were not in dispute. The sole issue was risk on return. Both representatives addressed us. The unfortunate delay between the hearing and the promulgation of the determination was a combination of waiting for confirmation from the Treasury Solicitors as to the issue of whether or not the appellant would be returned with assurances and also operational difficulties at Field House. It is noteworthy that no oral and monitoring evidence was heard.

**Submissions**

8. Ms Webber on behalf of the appellant reminded us that the terms of the remittal from the Court of Appeal left open all issues relevant to the asylum and human rights appeal, albeit that the merits of deportation per se were not in themselves arguable.

9. Ms Webber reminded us that the issue before us was whether the appellant faced a real risk of persecution or ill-treatment contrary to Article 3 of the ECHR if returned now to Algeria possibly, sufficiently serious harm to justify Humanitarian Protection. Her submission was that because of his profile, in particular as a result of the interest shown in him by the anti-terrorist branch of the Metropolitan police together with the widespread media coverage of the conviction and the public speculation regarding the reason for the offences, namely as a means of raising funds for terrorist activities, he would be at risk of identification as a potential terrorist on return to Algeria. She further submitted that his associations and affiliations with others convicted of similar terrorist motivated offences would place him at risk.

10. In her helpful skeleton argument Ms Webber analysed the risk to the appellant as to whether or not he would be perceived by the Algerian authorities as a terrorist or at least someone supporting terrorists. Furthermore if so perceived, whether that profile exposed him to a real risk of persecution or Article 3 ill-treatment.

11. Ms Webber accepted on behalf of the appellant that there was no real risk of ill-treatment to the appellant on his return as a failed asylum seeker or deportee. The risk was related to his perceived activities leading to conviction of fraud offences in the United Kingdom as a result of the investigations of the anti-terrorist branch of the Metropolitan police force.

12. Ms Webber relied on the fact that there had been public coverage of the police view that the conspiracy for which the appellant was eventually convicted was an operation to raise funds for terrorist activities. She also prayed in aid the fact that the continuing interest in the appellant by the anti-terrorist branch following his conviction, as set out in the bail summary opposing the grant of bail, put him at real risk of harm. Also his perceived links to international terrorism and armed groups in Algeria because of his association with co-defendants known to the Algerian authorities as terrorists exacerbated the risk.

13. Ms Webber drew to our attention the BBC online news report dated 24 November 2004 which reported the criminal prosecution. The headline indicated that a gang of Algerian asylum seekers had been jailed for their role in a High Street fraud which had netted at least £800,000 "possibly for terrorism". The article had stated:

> "The gang was caught after enquiries by the Anti-Terrorist branch backed by Special Branch National Terrorist Financial Investigation Unit".

Although money had not been traced the spokesman on behalf of Scotland Yard had spoken of their suspicion that the money had been sent overseas "to fund terrorist activities."

14. The bail summary document, which reflected the respondent's concerns about the appellant, stated:

> "September 2003, the subject was arrested by the Anti Terrorism Branch of the Metropolitan Police. He is later charged with conspiracy to defraud after his part in a complex conspiracy to defraud banks is uncovered. … It is believed that the proceeds of this fraud were being routed back out of the UK as their lifestyles were wholly incommensurate with the proceeds of the crime."

It further stated that:

> "His known associates and co-defendants in the recent conspiracy trial are all known to the Anti Terrorism authorities. Although he was charged with and sentenced for deception his case remained under the control of the Anti Terrorism Branch."

15. The links with international terrorism groups in Algeria through the co-defendants, were referred to in particular on a BBC news report of Wednesday 24 November 2004 which inter alia stated:

> "The gang was caught after enquiries by the Anti-Terrorist branch, backed by Special Branch's National Terrorist Financial Investigation Unit."

Indicating that the fraud had involved hundreds of bank accounts and scores of bogus identities, it further stated that the £800,000 was believed to have been diverted abroad via bank accounts in France, Finland and the Irish Republic.

16. Ms Webber relied on the fact that the appellant's conviction for fraud in November 2004 had featured prominently in the media and the police view that the money obtained was likely to have been funnelled overseas to fund terrorist activities had been stressed in these various accounts in the press.

17. In addition to the BBC report quoted above, Ms Webber also relied upon an article in the Telegraph on 25 November 2004 which described the convictions thus:

> "A gang of Algerian asylum seekers was jailed for up to five years yesterday for multi-million pound cheque fraud, which detectives feared was being used to fund international terrorism."

That report identified the appellant by name, age and place of residence as having received two years' imprisonment.

18. Prayed in aid by Ms Webber was the fact that nothing had been published since those reports to retract the view that the fraud had been masterminded to provide funds for terrorist activities. Drawn to our attention was the fact that at least two of the appellant's co-defendants, AK and FR, were known to the Anti-Terrorist Branch. FR had originally been charged in 1988 on suspicion of terrorist activities, although the proceedings had subsequently been discontinued in 1999. It was in his car that the appellant had been arrested. As the co-defendant KK won an appeal on asylum grounds following his conviction on the same charges as the appellant. The Secretary of State's appeal had been unsuccessful. It was clear from the evidence that the British authorities believed the appellant was involved in a conspiracy with the AK and his brother. The very fact that the appellant was initially place behind glass at the hearing at Field House, indicated their continuing belief that he was a threat to security. A co-defendant KK had also won his appeal on asylum grounds following his conviction on the same charges as the appellant. There was evidence that the British authorities believed the appellant's co-defendants, KK and AK, were involved in terrorism and specifically linked to the GSPC which was believed to have links with Al-Qa'ida in the Islamic Maghreb (AQIM).

19. It was Ms Webber's contention that there was every likelihood that the Algerian authorities would at the very least suspect the appellant of supporting terrorism in North Africa because of his association with co-defendants with links with Al-Qa'ida. The Secretary of State had done nothing to allay those concerns. The previous Tribunal had made findings that the government would have communicated to Algeria their suspicion that the appellant was connected with terrorism. At paragraph 44 of the Tribunal's determination it is accepted by the Tribunal that:

> "… there will have been discussion between the UK authorities and the Algerian authorities about the appellant's return."

The appeal to the Court of Appeal had been allowed by consent, the Secretary of State declining to confirm that any assurance had been given to the Algerian authorities that there was no suspicion that the appellant was involved in terrorism. Ms Webber urged us to accept that on all the evidence before us that there was no attempt by the Secretary of State to deny the appellant's involvement with terrorism or to downplay his involvement in any way.

20. On the one hand there was a complete failure by the Secretary of State to correct any misapprehension that the Algerian authorities may have regarding the appellant's terrorist connections and there was also a failure to obtain any individualised assurances of no ill-treatment on his return as a potential suspect of terrorism. It was Ms Webber's argument that it was that situation which placed the appellant in a vulnerable position.

**Risk of Serious Ill-Treatment**

21. Ms Webber invited us to accept that the previous Tribunal had accepted the assertion that anyone suspected of involvement with or support for terrorism would face a risk of persecution on return to Algeria. The previous Tribunal had cited a UNHCR position paper (date not given) on the return of Algerian nationals specifying its reference to the UNHCR's concern about human rights abuses in Algeria of those suspected of terrorism. At paragraph 32 of the determination the previous Tribunal commented on the UNHCR paper as follows:

> "UNHCR expresses concern that asylum seekers found not to be in need of international protection may face hostile treatment due to the Algerian Government's perception that such persons have been involved in international terrorism. It continues that there are public reports that European intelligence/security authorities have uncovered networks related to the GSPC and the GIA in recent months. It is alleged that these networks operate within the context of Algerian and other North African migrant communities in Europe. The report goes on to imply that those persons who have had prior links to Islamist movements would be treated upon return with suspicion and that there is a strong presumption that such persons may be subjected to persecutory treatment upon return."

22. Also relied upon by Ms Webber was paragraph 33 of the previous Tribunal's determination which considered Dr Joffe's report. Dr Joffe had referred to the "wide practice of torture" against those suspected of membership of dissident groups. Notwithstanding the proposals by President Bouteflika to introduce a spirit of national reconciliation, he is clear in his view that ""throat-cutters" could not be forgiven i.e. extremists and those accused of contacts with terrorism".

23. Albeit there has been reason for guarded optimism about the direction of Algeria under its current President, and in particular the spirit of national reconciliation, we were urged to accept that there nevertheless remained a real risk of torture or other ill-treatment at the hands of the Département du Renseignment de la Securité (DRS) for those suspected of association with terrorism. Persistent reports of torture and ill-treatment by the DRS continue as well as concern about the impunity of that body and the lack of any meaningful and effective safeguards to protect detainees. Those returned to Algeria suspected of links with terrorism but without the protection of diplomatic assurances to guarantee a high level of scrutiny, remained at risk of torture and ill-treatment at the hands of the Département du Renseignment de la Securité. The Secretary of State's argument that the risk of prohibited ill-treatment does not exist because of the deportation of Algerians under the Deportation With Assurances (DWA) programme was unsustainable. Special Immigration Appeals Commission (SIAC) cases have upheld decisions to deport Algerians under this particular programme which gives effect to the bi-lateral agreement between the Algerian and British authorities that individual returnees will be properly treated and puts in place a scheme for

monitoring such assurances by the British Embassy in Algiers. Whilst Algeria may be leaving behind a period of authoritarian military rule and moving towards democracy, without effective monitoring by the British Embassy in Algiers, those returned under suspicion of terrorist links were at real risk at the hands of the DRS.

24. Acknowledging the generalised improvement in Algeria in terms of human rights since July 2006, Ms Webber reminded us that to date in no case had SIAC relied solely on the improving human rights situation. In Y, (SC/36/2005) BB, (SC/39/2005), G (SC/02/2005) and U, (SC/32/2005) SIAC expressly said that without accepting the assurances by the Secretary of State they would have concluded there to be a real risk to those appellants. In this particular case this appellant did not have the security of diplomatic assurances. It was to be noted that Y, BB and U had all undergone Court of Appeal scrutiny. In the case of Q, although that appellant was returning to Algeria without an individual assurance, he was nevertheless returning as someone who had been the subject of a SIAC appeal, albeit later withdrawn. His case was assimilated with others and there had been intense diplomatic negotiations between the Foreign and Commonwealth Office, the British Embassy in Algiers and the Algerian authorities. Notwithstanding the absence of a specific assurance, he nevertheless had a high profile which was known to the British Embassy in Algiers and similar monitoring arrangements had been offered to his family. His situation was not comparable with that of this appellant who would not be returning with the benefit of any such monitoring arrangements with the British Embassy in Algiers.

**Country Evidence**

25. Ms Webber drew our attention to the Home Office Country of Origin Information (COI) Report on Algeria dated November 2007, quoting the US State Department Report of 2006 which had been published in March 2007 that although the frequency and severity of torture had declined during the year, human rights lawyers in Algeria maintained that torture continued to occur in military prisons. At paragraph 8.13 of the COI Report concern had been expressed particularly concerning those arrested on security grounds. The COI Report had also quoted an Amnesty International Report of July 2006 which in commenting that there had been a decrease in the use of torture by the police and gendarmerie, had nevertheless reported that torture and ill-treatment continued to be used systematically by military security, especially in the interrogation of individuals believed to be in possession of information relating to terrorist attacks (paragraph 8.09). Ms Webber reminded us that the DRS had powers of access which extended to prisoners both pre-arraignment and pre-judicial access.

26. The Amnesty International Report of July 2006 entitled "Unrestrained Powers: Torture by Algeria's Military Security" detailed the continuing torture used systematically by the military security described as an intelligence agency specialising in the interrogation of individuals believed to have information about terrorist activities. Albeit still widely known as "Military Security", the official name

since 1990 has been the Department for Information and Security (Département du Renseignement et de la Securité – DRS).

27. Drawn in particular to our attention were passages at page 64 of that report which described how the DRS remained "a force above the law". Those suspected of terrorist activity continued to be at risk of torture at the hands of the DRS. Amnesty International expressed concern that arrest and detention by the DRS routinely violated key safeguards and procedures established under Algerian and international law to protect detainees from abuse. The report described the officers and personnel of the DRS as members of the military and as such operating under the authority of the senior army command and Ministry of Defence. Algerian law empowered DRS personnel to exercise the role of judicial police, a function otherwise exercised only by the police and gendarmerie. Officers of the judicial police were endowed with powers to open police investigations, arrest suspects and detain them for questioning for a fixed period of time known as garde à vue, until either charged or released. The period of garde à vue is limited to 48 hours in ordinary criminal cases but can be extended up to 12 days in cases which are believed to be linked to terrorist activity. Amnesty International's research revealed that the DRS plays a major role in investigating alleged terrorism related offences.

28. Page 69 of the Amnesty International Report described the routine lack of contact with the outside world for suspects held by the DRS. It described the incommunicado detention as denying contact with families and access to legal advice and medical care. It also described the fact that detainees suspected of terrorist activities were routinely held in secret locations in facilities not officially recognised as places of detention. Pages 71 to 76 enumerated cases of torture and prohibited ill-treatment. The report described methods of torture including beatings, electric shocks, the method known as "chiffon" in which the victim is laid down and forced to swallow large quantities of dirty water, urine or chemicals through a cloth placed over their mouths. The report referred to falaka and suspension by the arms from a ceiling for long periods of time. There were also reports of detainees having been subjected to threats that female family members would be raped and other family members arrested.

29. Ms Webber referred us to page 62 of the Amnesty International Report which she submitted was relevant to her submissions. Here, the entrenched culture of abuse within DRS and the impunity from judicial scrutiny were a matter of comment. The report states:

> "Recent legal measures have entrenched impunity for state agents and barred any future judicial investigations into crimes committed by security forces. The measures are highly significant to continuing impunity in Algeria, and their practical implementation will need to be monitored closely. This report will focus on aspects of the laws which are relevant to human rights violations against detainees suspected of terrorist activities".

30. Ms Webber also drew our attention to the briefing to the Human Rights Committee by Amnesty International in respect of Algeria. This report is dated 1 October 2007.

31. The report noted that on 27 February 2006 the Algerian cabinet approved the "Decree implementing the Charter for Peace and National Reconciliation". The decree instituted a blanket amnesty for the security forces and state-armed militias and furthermore extended the previous partial amnesties for members of armed groups given under the Civil Harmony Law entrenching an already pervasive sense of impunity. It noted that both state forces and members of armed groups are accused of committing crimes under international human rights and humanitarian law that have not been investigated as yet. The Charter did not explicitly mention that state security forces would benefit from an amnesty.

32. A failure to provide an effective remedy for victims of human rights violations by state agents was a matter of comment in the report. Article 44 of the Charter states that:

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

Article 45 had prohibited any legal proceedings being initiated against an individual or collective entity 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. Article 46 effectively muzzled free speech and thwarted access to an effective remedy for victims of human rights violations by state agents; we note, however, that this restriction was a quid pro quo for the implementation of the amnesty.

33. The state of emergency imposed in 1992 increased the scope of the death penalty and lowered the age of criminal responsibility to 16 years. It also extended the period of pre-arraignment detention from 2 to 12 days. Although the level of human rights abuses appears to have decreased in Algeria since the 1990s, the report comments that it is in the context of counter-terrorism measures that serious human rights violations continue to be reported. It states:

> "A significant example is the time limit of 12 days during which suspects of "acts of terrorism or subversion" can be held without charge or legal counsel (garde à vue)".

It notes that DRS personnel appear to operate in effect without oversight by the prosecutor or any other civilian authority. As the arrest and detention procedures of the DRS are not subject to civilian oversight, there is no safeguard to protect detainees from torture and arbitrary detention when they are held in DRS barracks.

34. None of the cases reported by Amnesty International appear to have been investigated and inevitably there have been no prosecutions.

35. Page 20 of the briefing to the Human Rights Committee documents how safeguards enshrined in Algerian law are routinely disregarded by the DRS. It reports that, in all eight cases of deportation by the UK to Algeria monitored by Amnesty International, the persons deported were arrested and held by the DRS after arrival in Algeria. Notwithstanding the international scrutiny and oversight of those returned by the UK and monitored by Amnesty International, there remained a deliberate disregard for their legal rights. The real risk is that where there is a lack of international oversight those detained will be tortured.

36. Ms Webber made it clear that her submission was not that the appellant was likely to be prosecuted; it was speculative whether or not he would be prosecuted. She submitted that the real risks were first that in the event of a prosecution the appellant would not receive a fair trial and second that in a criminal system where torture was not investigated the impunity which existed for the DRS' activities inevitably gave rise to a risk of ill-treatment unless there was in place a high-level diplomatic interest and mechanism for monitoring. Ms Webber submitted that the evidence was clear that the DRS had a de facto "right" to obtain information in any way it considered appropriate. The lack of an effective safeguard conferred impunity on the DRS.

**Lack of Effective Safeguards**

37. Various international human rights instruments lay down the legal obligations to prevent torture. The skeleton argument prepared by Ms Webber sets out theoretical safeguards which the objective evidence clearly indicates that the DRS violates routinely. This includes the use of incommunicado detention, the failure to keep registers readily available and accessible to those concerned, including relatives and friends, as to the whereabouts of detainees etc.

38. The state of emergency imposed in February 1992 for one year was extended indefinitely in February 2003 and is still in place. Emergency laws were incorporated into the penal code and the code of criminal procedure which have now become entrenched in ordinary law. These emergency laws allowed the period of pre-arraignment detention known as garde à vue to be extended from 2 to 12 days where detainees were suspected of having committed acts of or preparatory to terrorism.

39. Ms Webber's submission is that whilst measures have been taken in 2004 which include the criminalisation of torture, an effective immunity remains in place in respect of the DRS.

40. Ms Webber drew our attention to the signing of the Convention against Torture and other human rights instruments safeguarding those in detention from torture. The safeguards enshrined in those various documents were helpfully set out in her skeleton argument. They include, inter alia, ensuring that detainees are held in places officially recognised as places of detention; ensuring the names of persons responsible for their detention are kept in registers readily available and accessible, recording the time and place of all interrogations together with names of those present, granting physicians, lawyers and family members access to detainees. Other mechanisms for the prevention of acts of torture included ensuring that any statement established as being made as the result of torture shall not be invoked as evidence in any proceedings, ensuring that the competent authorities undertake prompt and impartial investigation when there are reasonable grounds to belief that torture has occurred, ensuring the victims of torture have the right to redress and adequate compensation, ensuring that the alleged offender is subject to criminal proceedings if an investigation establishes that an act of torture appears to have been committed and ensuring independent oversight of arrest and detention. Ms Webber reminded us that DRS detainees were generally held incommunicado and she relied upon objective evidence indicating that lawyers had been harassed and intimidated when they have spoken out about the ill-treatment of their clients. The Human Rights Watch Report of 20 February 2007 entitled "Algeria: Human Rights Lawyers Tried on Dubious Charges" refers to the trial of Amine Sidhoum and Hassiba Boumerdassi, charged with providing unauthorised documents to their clients in prison. The report describes this as an attempt to intimidate human rights lawyers who "stand up for their clients".

41. Another area of concern drawn to our attention by Ms Webber was that expressed by Amnesty International that interrogation reports obtained by the DRS during incommunicado detention are used as evidence in Algerian courts. This contravenes the Code of Criminal Procedure (CCP). Ms Webber argued that the continuing acceptance by the Algerian courts of evidence obtained as a result of torture provided an incentive to continue to use such prohibited methods of interrogation. It was her contention that the product was valued and the mode of production overlooked.

42. Amnesty International also commented on the fact that physical evidence of torture was rarely investigated properly. Amnesty International recorded that none of the cases of reported torture and other ill-treatment documented in its 2006 report appeared to have been investigated by the Algerian authorities. The lack of investigation rendered meaningless the legal provisions in place offering a victim a right to redress. Difficulties for detainees in making allegations of torture to the Examining Magistrate, prosecutor or court are set out at pages 77 to 78 of the Amnesty International report.

43. Ms Webber invited us to note that there was no record of any significant case where a DRS or other security officer had been prosecuted for acts of torture or ill-treatment since the 2004 amendments to the penal code outlawing torture. The US State Department Report of 2006 also referred to the problem of impunity and the Human Rights Watch referred in 2003 described the DRS as "almost untouchable". The DRS' impunity effectively allows torture as a method of extracting information to become entrenched in the working culture and ethos of the service. Ready and regular resort to abuse has led to less reliance on proper conventional techniques of interrogation. Ms Webber argued that a generation of DRS officers were therefore likely to have lost the ability to conduct investigations by conventional methods and relied on torture for extracting information. Affording the status of national heroes to the perpetrators of abuse acting on behalf of the state by the Reconciliation Charter provides immunity for both the present and the future. Ms Webber argued that DRS officers were able to operate without oversight by other state organs or civilian authorities.

44. Accordingly, despite positive reforms to family law, improvements in education and human rights, and the moratorium on the implementation of the death penalty, there were nevertheless serious concerns expressed by the latest UN Human Rights Committee Report on Algeria published in November 2007. The principal concerns expressed by the committee are set out at paragraph 4 of the appellant's note in detail. Ms Webber contended that the Committee's observations gave added weight to the appellant's fear that he would face ill-treatment and torture by the DRS if returned to Algeria.

45. The Committee's report is written in French. At the conclusion of the hearing an opportunity was afforded to the respondent to check the translation upon which Ms Webber had relied. Subsequently Treasury Solicitors wrote confirming that they did not challenge the translation as submitted by Ms Webber.

46. Amongst the concerns raised by the Committee was the failure to provide information on cases brought by individual complainants relating to unfair trial, arbitrary detentions and disappearances. Secret detentions and the keeping of suspects incommunicado were raised as concerns together with continuing complaints of torture and inhuman and degrading treatment particularly engaging responsibilities of DRS. The disquiet expressed by the report is consistent with concerns raised both in the Amnesty International Report and the US State Department Report.

47. One area of particular concern to this appellant is the fact that although all civilian prisons are visited by the International Committee of the Red Cross, the DRS' detention venues are not; This increases considerably the risk of ill-treatment for someone in the DRS' detention and constraints the efficacy of the legal safeguards in place to prevent torture and ill-treatment. A returnee, with a profile of links with terrorism would be at risk of detention by the DRS and without any specific

assurances for monitoring their welfare, would be entirely at the mercy of the DRS who according to the reports act with total impunity.

48. Ms Webber then addressed us on the guidance to be found in the recent SIAC cases. She reminded us that one crucial factor to be remembered when considering the SIAC cases is the fact that all the appellants in SIAC cases would leave the United Kingdom with assurances in place.

49. Our attention was drawn in particular to paragraph 181 of the case of Y which focuses on country evidence and in particular the US State Department Report on Algeria published in February 2005. SIAC describes Algeria as "emerging from over a decade of terrorism and civil strife in which between 100,000 and 150,000 persons were estimated to have been killed". The free and fair election of President Bouteflika had led to greater civilian control thereby diminishing military influence in routine decision-making. At paragraph 182 of the judgment it was noted that although the Constitution enshrined an independent judiciary, executive influence was noted and although the government maintained a general control of the security forces, there were instances "in which security force elements acted independently of government authority. Some security force members committed serious human rights abuses". At paragraph 183 of the judgment the killing of suspected terrorists by security forces was noted.

50. The court also considered the Charter for Peace and Reconciliation and recorded the differing views as to its effect.

51. Ms Webber drew our attention to paragraph 339 and following paragraphs which she submitted painted an upbeat picture particularly for those being returned to Algeria pursuant to the Exchange of Letters, which are the result of negotiations between the British and Algerian governments to implement assurances for the return of those suspected of terrorism. Under cover of a letter dated 27 November 2007 the respondent provided a copy of the Exchange of Letters between the British Prime Minister, and the Algerian President.

52. Much reliance was placed by Ms Webber on paragraph 386 of the judgment in Y which says:

> "Of course, the evidence does not show that torture has now ceased to be a real risk for everyone in all circumstances and it would be wrong to conclude that that state of affairs now exists, but it is possible to make a more individualised assessment of that risk for someone in DRS detention for a relatively short period."

What does emerge from the judgment is that those returned pursuant to the negotiations between the British and Algerian governments will be provided with a significant measure of protection.

53. Paragraphs 391 and 392 of the judgment in Y focus on the effect of the bi-lateral assurances. What is clear is that assurances of monitoring by the British diplomatic mission in Algiers can reduce the risk of ill-treatment to a returnee.

54. Ms Webber invited us to accept that those returnees to Algeria returning without the benefit of specific assurances as to their safety were likely to be detained by the DRS where there was a suspicion of terrorist activity. The objective evidence suggested that the DRS behaved brutally and that such a returnee was likely to be ill-treated and charged. Ms Webber relied on the fates of Q and H; both were detained for the legal maximum of 12 days.

55. In the case of BB, SIAC at paragraph 5 of that judgment considered the assurances given by the Algerian Government:

> "5. In this case, the assurances given by the Algerian Government are central to the issue of safety on return. We hold that we can and should evaluate their credibility and worth. By what yardsticks should they be judged? Without attempting to lay down rules which must apply in every case, we believe that four conditions must, in general, be satisfied:
>
> (i) the terms of the assurances must be such that, if they are fulfilled, the person returned will not be subjected to treatment contrary to Article 3;
>
> (ii) the assurances must be given in good faith;
>
> (iii) there must be a sound objective basis for believing that the assurances will be fulfilled;
>
> (iv) fulfilment of the assurances must be capable of being verified."

56. At paragraph 6 the Commission held that an assurance would only be of worth if it was capable of being verified by such a mechanism such as monitoring, for example. The Commission gave guidance that the starting point for considering the issue of safety on return was the general situation subsisting in the country. Whilst the Commission in BB adopted the assessment of the country situation set out in the judgment in Y, it is clear that the political and security situation has improved in Algeria over recent years although Ms Webber argued that there remained a real risk to those suspected of terrorism and asked us to have regard to the fact that torture had not been eradicated.

57. Ms Webber, commenting on SIAC's rejection in paragraph 8 of the judgment in BB of Professor Seddon's view that it would be unsafe to return all persons suspected

of involvement in Islamist extremist activities, urged us to accept that it would be naïve to conclude that no one in that category would be at risk on return to Algeria.

58. Ms Webber prayed in aid Mr Layden's assessment of the situation set out at paragraph 11 of the judgment in BB. Mr Anthony Layden, the Foreign and Commonwealth Special Representative, acknowledged that torture still existed in Algeria but was hopeful that it was on the decline. Ms Webber referred us to the fact that he accepted that civilian authorities did not control the DRS – their chain of command is to the President as Minister of Defence. Mr Layden had noted that he had not seen any report of any prosecution of a DRS officer for torture or ill-treatment.

> "He bluntly acknowledged that he was not saying that there would not be a risk of ill-treatment if the United Kingdom Government had not made the special arrangements which it had. However his unshakable view was that the assurances given by the Algerian authorities in the case of BB eliminated any real risk that he would be subject to torture or ill-treatment."

Ms Webber invited us to conclude from Mr Layden's assessment of BB's risk on return to Algeria that it was the assurances which gave BB a measure of protection. Paragraph 14 set out the assurances given to BB. The assurances included an assurance that "his human dignity will be respected under all circumstances". SIAC concluded at paragraph 17 of the judgment in BB that they accepted the Algerian government's intention to comply with the assurances given. The long-term interest of the Algerian state necessitated compliance with the assurances given.

59. At paragraph 19 of the judgment in BB, there is reference to the return of I and V in June 2006. Both were deported after their appeals to SIAC were withdrawn. In the case of V no assurances were given or sought but it is accepted that neither appear to have been ill-treated. Both, it appears, were detained for five to six days on their return but neither made any complaint of torture or ill-treatment. Both they and their families were offered the opportunity to contact the British Embassy in Algiers although neither did so. There was a reference to fear on their part of "reprisals". It was to be remembered that both I and V had appeals to SIAC which they later withdrew. They had enjoyed a higher profile accordingly than that enjoyed by the appellant in this case.

60. Ms Webber, acknowledging the persuasiveness of any High Court judgments and SIAC judgments, nevertheless reminded us that ultimately it was a matter for this Tribunal to re-visit information if there was now fresh evidence which had not been available before SIAC or the High Court in earlier cases. In the case of G, the common ground in relation to the country situation in Algeria was summarised helpfully at paragraph 26. In particular Ms Webber relied on (d) in paragraph 26 which states:

"The Algerian Government has given the UK Government assurances as to the treatment of its citizens suspected of terrorism who are returned there. In the absence of these assurances there would be a real risk that on his return to Algeria G (and persons in a similar position) would be tortured or subject to other ill-treatment".

61. Ms Webber then drew our attention to the case of U. In particular our attention was drawn to paragraph 37 of that judgment which begins:

> "The events which have occurred since 'BB' and 'G' were decided demonstrate the following:
>
> (i) The clear view of Mr Layden that there was absolutely no reason to believe that 'H' would be arrested or detained … if deported to Algeria has been shown to be mistaken.
>
> (ii) However, the Algerian state has fulfilled to the letter, those parts of its assurances to the British Government which can be conclusively verified: …
>
> (iii) It is necessary to obtain such assurances in relation to an individual deportee for his safety on return to be reasonably assured".

The paragraph also records that there is evidence that the British Government has fulfilled its obligations to take sufficient active steps to ensure the Algerian Government fulfils its assurances. At (v) the judgment continues:

> "(v) The fact that the possibility that 'Q' and 'H' may have heard the noises of actual or pretended ill-treatment of others during their detention cannot be wholly excluded does not mean that verification of the fulfilment by the Algerian State of its assurances has not occurred. As we have recited, information about their treatment and condition in detention has been provided to SIAC from a variety of sources. Taken together, they do not establish that there are substantial grounds for believing that they have been ill-treated. What verification (like monitoring) can achieve is confidence, but not complete certainty that ill-treatment has no occurred. Provided that it does, the fourth condition identified in 'BB' will be fulfilled".

62. Ms Webber prayed in aid the fact that although the evidence did not satisfy SIAC on a balance of probabilities that Q and H were exposed to the sound of actual or pretend ill-treatment the possibility of such could not be excluded. The absence of independent monitoring was a crucial factor.

63. SIAC's conclusions in U were upheld by the Court of Appeal in the cases of MT, RB and U [2007] EWCA Civ 808. The Court of Appeal had held that SIAC's approach was reasonable and lawful and especially with regard to the assurances which were in place. Therefore the factual findings made by SIAC were confirmed and upheld.

64. Mitting J in BB accepted that the assurances given by the Algerian government were "central" to whether or not there was a risk on return. Mitting J acknowledged that it would be naïve to find that no persons suspected of terrorist activity would be at risk of torture or ill-treatment at the hands of the Algerian security forces. The objective evidence, confirmed by Mr Layden, indicates that torture remains an issue in Algeria especially as the DRS is not under civilian control. In the case of G (SC/02/05) it was not disputed that torture and other ill-treatment continued to be used on a systematic basis by the DRS. What was also confirmed was that in the absence of formal assurances given by the Algerian Government to the UK Government there would be a real risk on return of torture or other ill-treatment.

65. The need for an individualised assurance in relation to deportees to Algeria in order for a reasonable assurance of safety on return was repeated by Mitting J in U. SIAC's approach was confirmed by the Court of Appeal in MT, RB and U.

66. Ms Webber argued that in no case had the Commission been prepared to rely merely on the perceived improvement in the human rights situation in Algeria or the Presidential commitment to controlling the security forces without the additional guarantee of an individualised diplomatic assurance in order to uphold the Secretary of State's decision to remove a suspected terrorist to Algeria.

67. Ms Webber also prayed in aid that the US Government had also indicated that it would demand similar assurances from the Algerian authorities prior to returning any detainees from Guantanamo to Algeria. ABC News reported:

> "The US Government maintains it has not repatriated any prisoner without first getting assurances they will not be mistreated, but lawyers for the prisoners and some rights groups have called the US position hypocritical".

68. In her skeleton argument at paragraphs 45 to 52, Ms Webber prayed in aid the intensification of terrorist violence since SIAC's first global summary in Y. The improvement in the human rights situation was equated with the decline in urban terrorism in Algeria. However, Ms Webber drew to our attention the fact that, in recent months, the decline in urban terrorism had seemingly been reversed and violence had again become an issue in Algeria. The GSPC transformation into the Maghrab branch of Al-Qa'ida had resulted in more funding for terrorist activities in North Africa. Our attention was drawn to newspaper cuttings reporting the return of suicide bombings to Algeria. Ms Webber argued that it was inherently

unlikely that Algeria would liberalise its laws and practices at a time when terrorism was worsening. The deterioration in the security situation in Algeria was yet another consideration for the Tribunal in determining the safety of returning HS to Algeria. Ms Webber argued that it was extremely relevant that the group with which this appellant had been associated through his co-defendants, namely GSPC, was now viewed as a major security threat in Algeria. The DRS, if it suspected the appellant of involvement in a conspiracy to supply funds to a group suspected of re-introducing violence to Algeria, would place him at serious risk of torture or ill-treatment at the hands of the DRS on return to Algeria. The domestic war on terror was in the process of intensification, the temptation to continue using torture or prohibitive ill-treatment as a means of extracting information from those with suspected links to terrorism would not be lessened.

69. Ultimately Ms Webber submitted to us that the appellant was not in an analogous position to other deportees who had been returned under the DWA scheme. The appellant would not have the safeguard of any assurances, there would be no guaranteed programme of contact with the British Embassy, no regular checks of his welfare by them or indeed any knowledge of his whereabouts. The DRS' treatment of him would go unmonitored. In that situation, there was no meaningful comparison with those returned with assurances. The risk, Ms Webber submitted, was further exacerbated by the recent worsening of the political and security situation and the increased interest the DRS would inevitably have in him as a potential terrorist or a source of information on terrorist activity in Algeria.

70. Ms Webber asked us to find that the appellant was, because of his association with terrorism, entitled to recognition as a refugee or, in the alternative to humanitarian protection.

71. Ms Grange on behalf of the Secretary of State invited us to consider the very clear but narrow issues in this reconsideration. The issue she submitted was inherently a simple one – Is there a real risk of persecution/ill-treatment on returning this appellant to Algeria.

72. She reminded us that there was no separate allegation of a flagrant breach of Article 6; the appellant's contention being that the DRS acted with impunity as there was no criminal system in place to investigate torture.

73. Ms Grange reminded us that prior to his departure from Algeria in July 2000, the appellant had not been involved with any terrorist activity and was not suspected as a person involved in any way with terrorism. He was an English teacher and his original asylum claim had been based on what he perceived to be hostility towards him by the Algerian authorities because of his union activity.

74. On behalf of the respondent, Ms Grange acknowledged that the Algerian authorities would be aware of his conviction for an offence of a conspiracy to defraud. It was important, she submitted, to look at exactly what had been said in

the press which linked him with terrorist funding. At page 197 the BBC report had referred to "possibly for terrorism".

75. The fact that the gang had been caught by the Anti-Terrorist Branch, clearly indicated a terrorist aspect to the conspiracy. However, the funds had not been traced. There was no concrete evidence of where the funds had gone and much of the media reporting had been speculative. Accepting the headlines in the press, it was necessary to look at the detail which was far less certain in its information. The conviction itself had been for an offence of fraud. The respondent accepted that the conviction would be of interest but Ms Grange urged us to accept that it was unlikely that the appellant would be subjected to any greater interest than the standard 12 days of detention, but accepted that it was likely that the DRS would be involved. It was necessary not to over-react to the press reports. In the absence of any proven link with terrorism, it was not likely that the appellant would be subjected to anything more than the standard DRS interest in him.

76. Ms Grange submitted that the details in the bail summary, and the continued detention of the appellant, took the matter no further forward than the press reports. The resistance to bail was entirely consistent with the press reports which of themselves did not indicate that the appellant was likely to be of anything more than routine interest to the DRS.

77. In response to the arguments put forward by Ms Webber on behalf of the appellant in respect of his co-conspirators, Ms Grange reminded us that FR had only been charged and not convicted. The charge had been made nine years ago and he would not be likely to be of any significant interest to the DRS. With respect to KK and AK, both had left Algeria in 1991. Although prominent as terrorists in Algeria at that time, many years had now elapsed and it was unlikely that they would be of current interest. Again there was suspicion, but no actual proof, of a terrorist link in respect of AK. It was the respondent's submission that there was no proven link between the co-conspirators and terrorist activity. Their involvement in terrorism was a long time ago and they would be of no operational significance to the DRS now. AK's conviction would be of only indirect interest as he was the brother of a co-conspirator. The association was therefore sufficiently remote as to generate no specific collateral interest in the appellant. The lack of up-to-date information of any involvement by AK with the GSPC was a factor. The DRS would only be interested in the appellant if he was of current operational interest and the fact that so many years had now elapsed since his involvement with the co-conspirators, it was highly unlikely that he would be of interest to the Algerian security forces. The appellant's own involvement in activities had ceased in September 2003 which was over four years ago. He had been in detention ever since. These were all highly significant factors in determining whether or not he would be of current operational interest.

78. Dealing with background information, Ms Grange submitted that there had been a significant improvement in security and human rights in Algeria. The judgments

in the SIAC cases were detailed and followed hearing extensive expert evidence. There had been evidence from FCO officials which had been highly persuasive. The recent cases of Y, BB and U were of significant persuasive authority. It was an important aspect of these cases that SIAC had accepted the effectiveness of non-official monitoring. Even without official assurances, their lack did not necessarily mean that there would be no verification of the situation on the appellant's return. Praying in aid the cases of V and Q, Ms Grange asked us to accept that Amnesty conducted a monitoring function and the situation in respect of the appellant if returned to Algeria could be verified. Acknowledging that inevitably there would be no verification during any period of detention, she nevertheless urged us to accept there would be ex post facto monitoring which was still significant in terms of SIAC's expectations. Algeria was committed to maintaining its international reputation.

79. Referring to the case of G, Ms Grange drew our attention to paragraph 26 and in particular sub-paragraph (d) which referred to persons in a similar position as G being at risk. It was important to emphasise that this appellant did not fall within that category. Paragraph 35 of the judgment dealt with the experience of V and I, neither of whom had reported any ill-treatment although there had been a fear on their part of reprisals. Reliance was also placed by Ms Grange on paragraphs 36 and 38 of the judgment. SIAC had concluded that the length of time since G had been in Algeria coupled with the fact that he had been in detention or on strict bail conditions since December 2001 was likely to lead to his categorisation as someone of no current operational interest.

80. The case of U had been decided as recently as May of 2007. Paragraph 13 of the judgment summarised the background thus:

> "13. Three divisions of SIAC have now considered the state of affairs in Algeria and the reliability of assurances given by the Algerian State. We adopt them and do not intend to repeat them. In summary they are that: Algeria is making a sincere, broadly supported and generally successful attempt to transform itself from a war-torn authoritarian state to a normally functioning civil society; solemn diplomatic assurances given by the Algerian State to the British Government about individual deportees are reliable and can safely be accepted."

81. Paragraph 14 of the judgment in U refers to the fact that no individual assurance was given in the case of Q. Q was returned on 20 January 2007 and detained under Article 51 of the Criminal Procedure Code on 25 January 2007. Q was detained by the DRS and concern was expressed by Amnesty International as to the risk of torture. Enquiries by a British Embassy official elicited the information that Q had been afforded access to a lawyer and had been able to speak to his family by telephone. He was subsequently charged with two offences, including membership of an armed terrorist group active abroad. He claimed that whilst

DRS custody that he heard screams of people he believed to have been undergoing torture.

82. At paragraph 22 of the judgment, H's case was considered. He was returned to Algeria on 26 January and detained on 30 January. The British Embassy arranged to speak with one of his brothers on a weekly basis. H also indicated that he had heard the screams of people he believed were crying out in pain whilst being subjected to torture.

83. Paragraph 27 considers the treatment of Q and H. It notes that in neither case was any individual assurance given to the British Government broken because no assurance was given in the case of Q and there was no relevant assurance in the case of H. In each case the time limit prescribed for detention by the Algerian law was respected. The allegation of torture was dismissed and there was a finding of implausibility as to H's allegation that he had heard the screams of a woman being "stretched" in a nearby cell. Ms Grange also drew our attention to paragraph 35 which found that the evidence did not satisfy the Commission that Q and H were exposed to the sounds of people experiencing torture although the possibility could not be excluded.

84. The reference to the need to obtain assurances in respect of an individual deportee for his safety on return to be reasonably assured was accepted by Ms Grange. This is set out at paragraph 37(iii) (of the judgment in the case of U) and has been quoted in full earlier in this determination. However, she submitted that that sub-paragraph had to be viewed in the context of a person being deported from the United Kingdom to Algeria in the interests of national security. It was clear that there was a real risk attached to such deportation. Q and V had both been returned without assurances and neither had been ill-treated. Sub-paragraph (v) stated:-

> "(v) The fact that the possibility that 'Q' and 'H' may have heard the noises of actual or pretended ill-treatment of others during their detention cannot be wholly excluded does not mean that verification of the fulfilment by the Algerian State of its assurances has not occurred. As we have recited, information about their treatment and condition in detention has been provided to SIAC from a variety of sources. Taken together, they do not establish that there are substantial grounds for believing that they have been ill-treated. What verification (like monitoring) can achieve is confidence, but not complete certainty that ill-treatment has no occurred. Provided that it does, the fourth condition identified in 'BB' will be fulfilled".

Again our attention was drawn to the fact that the Court of Appeal had approved of the SIAC judgments in MT, RB and U. The Court of Appeal had found that the DRS was not out of control and non-accountable.

85. Y, BB and U were all very up-to-date, having been decided in 2007. There was expert evidence which had been considered by SIAC which was highly significant. It was accepted that there had been a recent increase in the number of bombings and violence in Algeria. It was also accepted that there was a continuing malpractice by the DRS but they were limited in the scale.

86. Ms Grange submitted that the individual circumstances were the key to the assessment of risk. SIAC had not accepted that prison conditions in Algeria violated Article 3 rights and she also prayed in aid the fact that two further returnees –X and A – had not been subjected to ill-treatment on return. In the current situation there was no reason to fear that the situation would lead to a loss of control by the President in respect of the DRS' activities.

87. By way of response to Ms Webber's argument that the increased volatility and security situation in Algeria would de-stabilise the peace process, Ms Grange drew to our attention the fact that SIAC had rejected that in its most recent determination. That was highly persuasive in her view. Y had been tried and acquitted in the ricin case. It had been accepted that there was evidence that Y had associations with FIS, was later a GIA supporter and a GSPC supporter. Following the approach taken by SIAC in the case of Y, the question to be asked in this particular case was whether or not the appellant was going to be of current operational value and therefore of any significant interest to the DRS. His involvement with terrorist activities was over four years old and his involvement and links with the GSPC were tenuous at best. His long period of detention also contributed to the argument that he would be of no operational interest. Therefore in all those circumstances relating to this appellant, no real risk had been made out that he would be of current operational interest to the DRS.

88. With regard to recent objective evidence relating to Algeria, Ms Grange submitted on behalf of the respondent that DWA returnees, although some had been detained, there was no evidence that they had been tortured. SIAC had factored into their determination the most recent and up-to-date information when assessing risk on return. All the evidence relating to those who had been returned indicated that, albeit detained, they had nevertheless not suffered any serious ill-treatment or torture. It was only in the case of those at greatest risk that had there been considered necessary to obtain assurances. Paragraph 391 of Y notes that only where there is a prospect that there will be ill-treatment are assurances sought. Ms Grange argued that if the appellant were to be ill-treated on return, it would jeopardise returns under the DWA programme albeit that he himself had not specific individualised protection. Q and V had been scrutinised on their return by Amnesty International even though no individual assurances were in place for them.

89. She argued that seeking an individual assurance in respect of this particular appellant might be counter-productive and it would give credence to the view that he was a likely terrorist. There was a danger that if such an assurance was sought,

that there would be the danger of guilt by association with other DWA returnees, some of whom were extremely dangerous and who did threaten national security. Seeking a similar assurance of protection could suggest that this appellant was in the same category.

90. Ms Grange addressed us on the Joffe Report. She submitted that the report dated September 2005 was out-of-date. She asked us to find that it lacked detail of why this appellant would be of current operational value. She urged us to attach little weight to Dr Joffe's opinions.

91. With regard to the most recent UN report, on the assumption that the translation was correct, Ms Grange submitted that there was ongoing concern about the continuation of DRS abuses. By way of response, she prayed in aid the Hamaddouch brothers' case. It was her submission that the report did not take matters any further than the most recent SIAC case. The issue was still whether or not this appellant would be of current operational value to the Algerian authorities and, in her submission, nothing had changed since the most recent cases considered by SIAC.

92. She relied upon the exchange of letters between the British Prime Minister and the Algerian President, copies of which were later submitted to us. We accept that they provide general assurances to be applied to individuals, to be supplemented by individual assurances in each case.

93. Ms Webber addressed us by way of reply, focusing on changes in the human rights situation, the appellant's profile and the question of assurances.

94. With regard to the changes in the human rights situation she invited us to remind ourselves that the SIAC cases dealt with a particular species of case. With regard to the assurances in the cases of I, V and Q, there had been no individual assurances but they were nevertheless under the DWA programme. Accordingly, information had been sent to the Algerian authorities with respect to all of them. General human rights was linked to the issue of assurances. It had to be remembered that the diplomatic assurances were put in place as a response to the concerns raised by the House of Lords. SIAC had considered whether these assurances could be relied upon and had come to their decision bearing in mind the changed landscape with respect to human rights and a decline in urban terrorism. The Secretary of State had accepted that the DRS was an independent actor with its own power base although not accepting that it acted out of control and without accountability. However, the Human Rights Committee had expressed concerns about the way in which the DRS operated with apparent impunity.

95. The Human Rights Committee Report was again drawn to our attention and paragraph 24, which recounted the harassment of journalist and human rights lobbyists and organisers, was drawn in particular to our attention. We were reminded of the report relating to the arrest and charging of two human rights

lawyers. It was important not to forget that Algeria was not an open and free democracy.

96. Ms Webber submitted that it was a difficult balancing act to decide whether assurances were advisable as disclosure on return produced a risk. The evidence as to whether returnees had been ill-treated was not entirely clear. The regime relied upon the co-operation of families of deportees which was an uncomfortable relationship as of course it was the United Kingdom who had in fact deported the individuals. Therefore, there was no natural trust between the British Embassy and the deportees and their families.

97. Dealing with the appellant's own profile, in response to Ms Grange's submission that the appellant was of no current operational interest to the DRS, Ms Webber challenged the submission that he had no previous profile and therefore would not be at risk of adverse interest by the DRS was not necessarily so. There was a real risk that the appellant would be interrogated. It had to be remembered that Y had a risk profile – he had been convicted in absentia in Algeria for offences committed in 1996. He had not been implicated in involvement of funding of terrorism from the United Kingdom, he, Y, had been suspected of involvement in the ricin plot.

98. The appellant in this case was at risk of interrogation by the DRS because there was a danger that he might be perceived to have current intelligence relating to terrorist funding networks. Therefore, he would be of current operational value and interest to the Algerian security services. The association with FR and the KK and AK placed the appellant at risk of being perceived by those security forces as someone in possession of important information about funding networks.

99. Acknowledging recent improvement in human rights and the sincere efforts made by both the Algerian President and government to modernise Algeria and to be seen as partners of the west, it was important for the assurances given by Algeria to the UK government to be seen to be working. However Ms Webber argued that those being returned without assurances would be at risk. Accordingly, Ms Webber re-iterated her argument that returning this appellant now to Algeria would cause the United Kingdom to breach its obligations under the Refugee Convention.

100. After the conclusion of the hearing, there was correspondence from the Treasury Solicitors, copied to the appellant's representatives, which indicated that the Secretary of State did not wish to make any further submissions following the handing down of the judgment in the case of PP, heard recently by SIAC. It also submitted a copy of the exchange of letters between the Prime Minister, Mr. Tony Blair and President Bouteflika.

101. With regard to monitoring of this particular appellant, it was indicated that it would take time to establish whether or not any form of monitoring could be put in place.

102. Further correspondence gave information about the appellant's co-defendants:

1) FB has been granted asylum and indefinite leave to remain in the United Kingdom;
2) AB was refused asylum and deported to Algeria on 24 October 2005;
3) FR was granted asylum and indefinite leave to remain in the United in August 2000;
4) AK was granted asylum and indefinite leave to remain on 16 March 2001.
5) AK (date of birth 17.9.1970) – no information on computer records as to status.
6) AK (date of birth 29.3.1964) – resident in the UK since 1992, married to an EEA national. He failed to regulate his stay and was deported to Algeria on 18 August 2007.
7) MM, appeal rights exhausted and awaiting deportation. The letter indicated that there was no current information on KK. This information, we note, was copied to the appellant's solicitors.

103. We have before us a letter received by the Tribunal from Treasury Solicitors on 13 February 2008, confirming that monitoring on return is not to be offered to the appellant. The letter states:

> "Monitoring of returnees is not offered by the British Embassy save for those whose deportation (with assurances) appeals have been considered by SIAC and who specifically request it. Those returnees are deported on national security grounds."

**Analysis**

104. The issue before the Tribunal is whether the appellant faces a real risk of persecution or ill-treatment if returned now to Algeria. The question to be answered is whether his profile would cause the Algerian authorities to view him as being of current operational value/interest. Will the sustained interest shown in him by the anti-terrorist branch of the Metropolitan Police coupled with the widespread media reporting of his conviction, which gave rise to speculation that he was linked with terrorism, cause the DRS to take an interest in him as someone connected with terrorism?

105. We find that his arrest by the anti-terrorist branch of the Metropolitan Police and his conviction for conspiracy to defraud in July 2004, for which he received a two year term of imprisonment and a recommendation that he be deported, is likely to be known to the Algerian authorities. We also find that it is likely that he will be perceived by the Algerian authorities as someone with close connections to terrorism and a direct involvement in fund raising for terrorist activities. His close association and affiliation with known terrorists will compound the risk in our view.

106. We note that it is common ground that no risk arises on his return to Algeria as a failed asylum seeker per se.

107. His high profile, created by media coverage of the convictions in the United Kingdom, is in our view significant. We are satisfied that there was continuing interest in him by the anti-terrorist branch of the Metropolitan Police as set out in the bail summary which opposed his bail. That in our view reinforces the perception of him by the British authorities as someone with links to international terrorism and armed groups in Algeria. Coverage of his possible terrorist activities in BBC's On Line News report and in the Daily Telegraph of 25 November 2004 raises his profile. The Telegraph described the convictions thus:

> "A gang of Algerian asylum seekers were jailed for up to five years yesterday for a multi-million pound cheque fraud, which detectives feared was being used to fund international terrorism".

The appellant was named in that report as having been sentenced to two years' imprisonment. The media coverage naming him was specific and clear. There was no subsequent retraction or correction of the allegation that the criminal activities in which the appellant was involved were masterminded to provide funds for acts of terrorism. We find that the detailed media coverage of his conviction is likely to have come to the attention of the Algerian authorities and will cause him to be seen as someone with links to terrorist activities.

108. We also accept the evidence before us that the British authorities believe that his co-defendants, including inter alia the brothers, KK and AK, were involved with terrorism with specific links to the GSPC – connected with Al-Qa'ida, now renamed The Al-Qa'ida in the Islamic Magreb. Whilst the British authorities have not sought in any way to downplay the appellant's involvement in terrorism, they nevertheless refuse to provide any individualised assurance of safety on his return as a terrorist suspect.

109. Notwithstanding the fact that to be returned with assurances in place alerts the Algerian authorities to the fact that a returnee is considered by the British authorities to be a threat to national security, the monitoring does provide a significant measure of protection for the returnee. There would be no formal oversight of his welfare in place.

110. We have considered the UNHCR position paper on the return of Algerian nationals suspected of having links to terrorism. We adopt the previous Tribunal's summary of the paper:

> "UNHCR expresses concern that asylum seekers found not to be in need of international protection may face hostile treatment due to the Algerian Government's perception that such persons have been involved in international terrorism".

It continues:

> "there are public reports that European Intelligence/Security authorities have uncovered networks relating to the GSPC and the GIA in recent months. It is alleged that these networks operate within the context of Algerian and other North African migrant communities in Europe. The report goes on to imply that those persons who have had prior links to Islamist movements would be treated upon return with suspicion and that there is a strong presumption that such persons may be subjected to persecutory treatment upon return."

111. We also note the Amnesty International Report of July 2006 entitled "Unrestrained powers: Torture by Algeria's Military Security". This report contains a detailed account of the continuation of systematic torture in the process of interrogating those believed to have in their possession information regarding terrorist activities. It is clear to us that the DRS operates with impunity and that it is regarded by many to be "a force above the law".

112. The extension of the period of garde à vue from 48 hours to a period of 12 days where terrorist activity is suspected increases in our view the potential for brutal interrogation of the appellant. We find that incommunicado detention is likely to increase the risk of torture as outlined in paragraphs 71 to 76 of the report. We have also been influenced in our decision making process by the briefing to the Human Rights Committee by Amnesty International of October 2007. We note its conclusion at page 20 thereof that legal safeguards are all but routinely disregarded by the DRS.

113. We have borne in mind the US State Department Report of 2006, which highlights the DRS' activities and the impunity under which it operates, and also the Human Rights Watch description of its operations as "almost untouchable".

114. We are influenced by the most recent report before us – the UN Human Rights Committee published in 2007. We note that the respondent did not challenge its translation from the original French. We note the disquiet expressed in this most recent report which itself reflects the concerns raised in earlier reports namely the Amnesty International Report and the US State Department Report.

115. The fact that the International Committee of the Red Cross is specifically excluded from DRS detention venues, although permitted to visit other detention facilities, is yet another mechanism whose absence potentially increases the vulnerability of someone in the appellant's position.

116. We have considered Professor Seddon's views as examined in BB; we agree with Ms Webber's argument that to accept the Court's rejection of his opinion that it would be unsafe to return all persons suspected of terrorist involvement would be a triumph of naivety. We have, however, looked carefully at the objective evidence before us in reaching our conclusions and have been greatly assisted by the most current documentation.

117. Mr Anthony Layden's assessment, as Special FCO representative, was also of assistance to us. We note his acknowledgement that torture, albeit hopefully in the decline, nevertheless remains prevalent. We also note his confirmation that civilian authorities have no control over the DRS. He clearly, in our view, considered that the specific assurances given by the Algerian authorities eliminated any real risk that BB would face torture or ill-treatment. Although the converse would not necessarily be true, namely that there would inevitably be a risk where no assurances were in place, it does follow that the assurances are central to the assessment of the issue of safety on return of someone suspected of terrorist association.

118. Whilst we have been greatly assisted by the recent SIAC judgments, we are mindful that their decisions relate exclusively to Algerians being deported under the DWA programme. This appellant is not in that category. His welfare will not be monitored in any way by the British Embassy in Algiers if returned to Algeria. We, therefore, distinguish this appellant's situation from those considered by SIAC in the cases Y, BB, G and U.

119. We adopt Ms Webber's reasoning that in no case has SIAC been prepared to rely merely on the perceived improvement in the human rights situation in Algeria and the presidential commitment to overseeing and controlling the security forces without the additional guarantee of an individualised diplomatic assurance in order to uphold the Secretary of State's decision to remove a suspected terrorist to Algeria.

120. Although there has been guarded optimism about the direction of travel in respect of Algeria's approach to human rights under President Boutefilka's presidency, there is considerable documentation of how the DRS is able to ill-treat and torture suspects with impunity.

121. Ms Grange's submission that several years have elapsed since the appellant's co-conspirators, AK and KK and FR amongst others, were charged with the relevant offences, albeit factually correct, in our view can in no way guarantee disinterest in the appellant's criminal/terrorist activities. We reject Ms Grange's argument that the passage of time removes any current operational interest in the appellant. The appellant's activities ceased in September 2003 which in our view is not sufficiently remote to ensure disinterest in any information he may be suspected of possessing. The return of urban terrorism and increased violence we think is likely to increase interest in those suspected of having useful terrorist intelligence including information about funding.

122. We note Ms Grange's acknowledgement that there were ongoing malpractices by the DRS. However "limited in scale" these violations may be, there is no guarantee that the appellant would be protected from any such malpractice. It would be cold comfort for him if tortured to know that they were of limited scale. Y had been convicted in absentia in Algeria for offences committed as long ago as 1996 and had not been implicated in funding terrorism by involvement in criminal activities in the United Kingdom. There is in our minds a real likelihood that the Algerian authorities will consider the appellant may be of current operational interest with valuable intelligence to extract and this will thereby place him at risk of detention for 12 days by the DRS where he will be in danger of torture and ill-treatment.

123. The flaw, with regard to Ms Grange's submission that a lack of formal assurance in respect of monitoring this particular appellant's return did not expose him to unmonitored risk of ill-treatment, because of Amnesty's general monitoring function in Algeria, is that during any period of DRS detention, the appellant would be totally incommunicado. Whilst Algeria may well be committed to securing a good international reputation, the fact that the DRS is known to act with uncontrolled brutality, a returnee such as the appellant suspected of terrorist links, would be unprotected from persecution and Article 3 ill-treatment.

124. We are persuaded by the totality of the evidence before us that there is a lack of international oversight of those detained by the DRS. There is no monitoring regime in place to ensure that those detained will not be tortured, especially where there is likelihood that they will be suspected of involvement in terrorism. Any confessions extracted by such interrogations are admissible in evidence and in any subsequent trial, despite such evidence contravening the Code of Criminal Procedure.

125. Consideration of all the factors relating to this appeal leads us to have serious reservations about the appellant's safety if returned to Algeria now without any individualised assurances in place. The SIAC cases are good for the proposition that "solemn, diplomatic assurances given by the Algerian state to the British government about individual deportees are reliable and can safely be accepted". However, without such assurances and no prospect of monitoring by the British Embassy, we have grave concerns as to the appellant's safety if returned now to

Algeria as someone suspected of having links with terrorist activity. In our judgment we are satisfied that the appellant is at risk on return to Algeria of persecution or Article 3 ill-treatment, although he was not convicted of a specific offence of terrorism.

126. It is clear that any mistreatment would arise from the appellant's actual or perceived political beliefs.

**Decision**

127. The appeal is allowed on both refugee and Article 3 ECHR grounds.

E ARFON-JONES DL
DEPUTY PRESIDENT
Date: