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# Unrestrained powers: Torture by Algeria's Military Security

## 1. Introduction

The Algerian authorities have been engaged in counter-terrorism measures for well over a decade and during the 1990s were widely criticized for human rights violations committed in the name of counter-terrorism. Recently, however, Algeria has become a prime ally of the USA and other governments involved in the "war on terror".

Although the level of serious human rights abuses in Algeria has decreased compared to the 1990s, it is precisely in the context of counter-terrorism measures that serious human rights violations continue to be reported. Over the past few years, Amnesty International has looked in detail at the issue of torture and other cruel, inhuman or degrading treatment or punishment (hereafter: ill-treatment). While there has been a decrease in reports of torture and other ill-treatment in the custody of police and gendarmerie, torture and other ill-treatment continue to be used systematically by the "Military Security", an intelligence agency which specializes in interrogating individuals who are believed to have information about terrorist activities. Although it is still widely known as "Military Security", its official name since 1990 has been the Department for Information and Security (Département du renseignement et de la sécurité, DRS).

This report describes Amnesty International's findings concerning persistent torture and other ill-treatment by the DRS in terrorism-related cases. Although fewer such violations are reported today than during the height of the violence of former years, people detained by the DRS are systematically held in secret detention and denied any contact with the outside world, often for prolonged periods, in conditions which facilitate torture and may in themselves constitute ill-treatment. Such treatment violates Algerian law and breaches Algeria's international human rights obligations.

The violations described in this report concern individuals from a wide range of backgrounds. Some were arrested for alleged involvement with the remaining armed groups in Algeria; others are Algerian nationals who were resident abroad, or foreign nationals of Algerian origin, who may never have taken part in the conflict inside Algeria. Some may have been arrested on suspicion of involvement in acts of violence; others may be related or otherwise linked to suspects. It appears that the main reason why individuals are detained by the DRS and subjected to torture or ill-treatment is that they are thought to possess information about armed groups in Algeria, or about alleged terrorist activities abroad.

Algeria is emerging from over a decade of violence in which as many as 200,000 people are thought to have been killed and many others injured. Part of the violence was perpetrated in the name of counter-terrorism by the security forces, who were responsible for thousands of extrajudicial executions, "disappearances" and the systematic use of torture. Grave abuses were also committed by members of armed groups, but the vast majority of these have never been investigated by the authorities and the perpetrators have not been brought to justice.

Recent measures taken by the Algerian authorities with the stated intention of consolidating “national reconciliation” have failed to address this grim legacy. In February 2006, new laws were introduced to exempt from prosecution or to release under an amnesty those convicted of or detained on charges of terrorist activity, and to grant comprehensive impunity to members of the security forces responsible for human rights violations. According to government statements, some 2,000 people have been released from detention in accordance with the laws for “national reconciliation”. These include individuals suspected of terrorist activities who had been held in secret detention and were reportedly tortured or otherwise ill-treated, some of whose cases are described in this report.

Some foreign governments have argued that the measures for “national reconciliation” have eliminated the risk that Algerians suspected of involvement in terrorism either abroad or in Algeria would be arrested and tortured or otherwise ill-treated in Algeria. At least one, that of the United Kingdom, has been seeking to reach an agreement under which Algerian nationals considered a threat to security in the United Kingdom could be forcibly returned to Algeria on the basis of “diplomatic assurances” that they would not be tortured or subjected to other human rights violations in Algeria. Such bilateral agreements between governments, however, are not binding in international law, unlike the treaties prohibiting torture to which Algeria is a party but has consistently breached. Amnesty International has fundamental concerns about the use of “diplomatic assurances” (or “diplomatic contacts”) in returning foreign nationals who are considered to be a security threat. In the case of Algeria, however, Amnesty International is also concerned that the civilian authorities, in practice, exercise no control over the conduct and activities of the DRS, who would most likely be responsible for detaining such returnees.

Amnesty International is also concerned that the measures of “national reconciliation,” by allowing continuing impunity for the grave human rights abuses of the past, may further entrench torture and other ill-treatment in Algeria. By extending an unconditional amnesty to members of the security forces who committed crimes under international law and barring Algerian courts from considering complaints against them, the February 2006 laws have effectively signalled to the perpetrators of torture and other ill-treatment that they can act with impunity. Further, the laws make it a criminal offence punishable by up to 10 years’ imprisonment to criticize publicly the past or ongoing conduct of the security forces.

### ***About this report***

This report details Amnesty International’s concerns regarding torture and other ill-treatment of detainees held in connection with alleged terrorist activity over the past few years and describes the context in which these violations continue to be committed in Algeria. It makes recommendations to the Algerian government and to foreign governments cooperating with Algeria in counter-terrorism measures. If implemented, these recommendations would end the practice of torture and other ill-treatment in Algeria.

The report follows a memorandum which Amnesty International sent on 13 April 2006 to Algerian President Abdelaziz Bouteflika, who also holds the position of Minister of Defence, in which capacity he oversees the DRS, the service most frequently associated with secret

detention and torture.<sup>1</sup> The memorandum sought comments from the authorities and requested information on any investigations that had taken place into 12 representative cases of torture and other ill-treatment which Amnesty International wished to reflect in this report. The cases are documented in detail in the memorandum and some of them are also referred to in this report. By the end of May 2006, Amnesty International had received no response from the Algerian authorities to its memorandum.

For many years, Amnesty International has closely monitored the human rights situation in Algeria. The findings presented in this report are based on dozens of cases of torture and other ill-treatment collected by Amnesty International between 2002 and 2006. Amnesty International monitors public information sources on Algeria, researches individual cases of abuse which are brought to its attention and maintains continuous contact with human rights activists in Algeria. In 2003 and 2005 Amnesty International was able to visit Algeria and conducted in-depth research on torture, as well as other human rights concerns. During its visits to the country Amnesty International met torture survivors, families of detainees, human rights activists, lawyers, and members of local human rights organizations, as well as relevant governmental and other authorities. In May 2006, Amnesty International informed the government that it wished to visit Algeria in September 2006, but has not yet received a response.

During its 2005 research mission, Amnesty International held meetings on its preliminary findings with officials at the Ministry of Justice, as well as the official human rights institution, the National Consultative Commission for the Promotion and Protection of Human Rights (Commission nationale consultative de promotion et de protection des droits de l'homme, CNCPPDH). In these meetings, many of Amnesty International's questions, such as those regarding the role of the DRS and mechanisms of oversight, remained unanswered. Despite repeated requests, Amnesty International has been unable to obtain meetings with the Ministry of Defence, under whose authority the DRS operates.

### **Key recommendations**

Amnesty International is calling for immediate action to end torture and other ill-treatment. As a matter of priority, the government should:

- Ensure that all arrests and detentions comply fully with procedures established by law. Given the lack of accountability and of any effective oversight over the DRS, its officers should not be allowed to arrest and detain suspects;
- Institute effective safeguards against torture and other ill-treatment, in particular by granting anyone who is taken into detention prompt access to a lawyer;
- Fulfil its international obligation to investigate and punish torture and other ill-treatment and repeal legal provisions introduced in February 2006 which contravene this obligation and criminalize free expression about state abuses.

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<sup>1</sup> The memorandum was made public on 18 April 2006, see: *Algeria: Torture in the "War on Terror" - A memorandum to the Algerian President*. AI Index: MDE 28/008/2006.

Foreign governments, too, must do more to help end torture and other ill-treatment in Algeria as security cooperation is being strengthened. Amnesty International recognizes that foreign governments have a legitimate interest in cooperating with the Algerian authorities in preventing security threats and investigating international crimes. However, international cooperation to fight terrorism must be conducted in full conformity with international law, and states must ensure that any measures taken to combat terrorism comply with their international obligations. Amnesty International is calling on foreign governments to:

- Ensure that Algerian nationals will not be forcibly returned to Algeria if they would be at risk of torture and other ill-treatment and end the use of “diplomatic assurances”. Governments should instead work towards establishing system-wide safeguards against torture and other ill-treatment in Algeria;
- Ensure that evidence obtained from suspects in Algeria under torture or ill-treatment is not invoked as evidence in any court proceedings;
- Ensure that their own security forces, including intelligence agencies, do not facilitate or become complicit in human rights violations in Algeria and that anyone who is arrested in Algeria at the request of a foreign government is treated in accordance with Algerian and international law and is not arrested or detained by the DRS.

## **2. Terrorism and counter-terrorism in Algeria**

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 in which 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. The DRS, the force most associated with torture and other ill-treatment today, played a key role in the escalation of violence against civilians during the 1990s. Impunity for past violations has been further entrenched with amnesty laws introduced in 2006 with the stated intention of bringing closure to the years of violence.

### ***Algeria and counter-terrorism***

The official state newspaper *El Moudjahid* recently described Algeria’s role in counter-terrorism cooperation with the USA as follows:

Algeria is involved in the fight against terrorism. The country undeniably has extraordinary experience in the area, one that was acquired at a high price by her domestic resources alone. The country has experience in the area of collecting and processing information that makes its intelligence agencies an unavoidable partner

in any fight against terrorism. The US has acknowledged this experience, which is teaching the world something.<sup>2</sup>

Notably, since the attacks in the USA on 11 September 2001, Algeria has become an important ally of several foreign governments in the “war on terror”. Some have set up programmes of financial assistance and capacity-building to support efforts to counter terrorism in Algeria and other countries in the region. The US government has strengthened counter-terrorism cooperation with Algeria, particularly in the context of the Trans-Sahara Counter Terrorism Initiative (TSCTI), a US government programme aimed, among other things, at strengthening the capacity of the Algerian and other security forces to combat terrorism in the Sahara region. The European Union (EU) has committed to providing counter-terrorism assistance to Algeria as one of two priority countries.

An increasing number of Algerian nationals have been arrested in other countries for alleged involvement in terrorist activities, raising the interest of foreign governments in exchanging security information with the Algerian authorities. Several governments, including those of Canada, France and the United Kingdom, have been negotiating with the Algerian government over the deportation of Algerian nationals who are considered to be a security threat in their countries. Some 25 Algerian nationals are believed to be held in the US military detention centre at Guantánamo Bay, some of whom may soon be transferred to Algeria.

The US government, among others, has publicly emphasized Algeria's importance as an ally in international security cooperation, at times openly endorsing Algeria's counter-terrorism approach during the 1990s.<sup>3</sup> The Algerian government, in turn, has sought to counter international criticism of its human rights record by referring to its domestic terrorist threat and by claiming that Algerian armed groups were aligned with the international terrorist network *al-Qa'ida*. However, there is little in the conduct of armed groups in Algeria to substantiate this claim.<sup>4</sup>

In reality, Algeria's counter-terrorism campaign has been aimed first and foremost at crushing armed groups in the context of a national power struggle. Some armed groups formed after the army cancelled Algeria's first multi-party elections in 1992, which an Islamist party, the Islamic Salvation Front (Front islamique du salut, FIS), had been widely expected to win. Seeking to claim the electoral victory of the FIS through violence, armed groups targeted not only institutions of the state but increasingly civilians thought to have backed the military coup, or to have failed to conform to “Islamic” values, as defined by the groups.

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<sup>2</sup> Quotation from an editorial on US-Algeria relations, see: “Montée en puissance des relations”, in: *El Moudjahid*, 19 April 2006; translation by the BBC.

<sup>3</sup> In a much-quoted interview, the US Assistant Secretary of State for the Middle East, William Burns, said during a visit to Algeria in 2002 that Washington had “much to learn from Algeria on ways to fight terrorism”. Since then, public expressions of support by US officials have become more guarded, but Algeria continues to be referred to as a “loyal ally” in international counter-terrorism cooperation (see, for example, Algerian press reports of a recent visit of a senior State Department official to Algeria, «Une coopération militaire en pleine croissance», *La Tribune*, 4 April 2006).

<sup>4</sup> See: International Crisis Group: *Islamism, violence and reform in Algeria: Turning the page*. 30 July 2004, p.15ff.

The escalation of violence in Algeria was the result of a complex dynamic in which the security forces themselves played a key part by committing large-scale violence. In aiming to root out support for the FIS amongst the population at large, Algerian security forces engaged in a campaign of violence against members and actual or perceived supporters of the FIS. Arbitrary arrests and administrative detentions became widespread, torture became systematic, and thousands of people were extrajudicially executed at the hands of the security forces. According to official figures released in March 2005, at least 6,146 people remain “disappeared” to this day,<sup>5</sup> following their arrest by security forces and state-armed militias.

Emergency legislation was introduced in 1992 and 1993. Among other things, it established special courts for terrorism-related trials and broadened the definition of terrorism to include a wide range of activities, including the peaceful exercise of some civil and political rights. Like many other elements of the emergency legislation, the definition of terrorism was incorporated into the Penal Code in 1995 and is still in force today (see below, *Broad definition of terrorist offences*). Thousands of people were sentenced between 1992 and 1995 by the special courts which curtailed defence rights, restricted the right of appeal, and whose composition remained secret. Even after the courts were abolished in 1995, terrorism-related trials continued to fall far short of international standards for fair trial, with judges failing consistently to investigate allegations of torture and other ill-treatment.

The Algerian authorities have sought to justify these measures by pointing to the violence committed by armed groups in bomb attacks, abductions, rape and large-scale killings of civilians. However, despite the dramatic increase of armed group violence during the mid-1990s, the vast majority of the crimes have never been fully investigated by the authorities and the perpetrators have not been brought to justice. By the late 1990s, when hundreds of civilians at a time were killed in attacks by armed groups, the composition and leadership of the groups had become increasingly obscure.

If anything, the Algerian example teaches a lesson on the devastating consequences of a counter-terrorism strategy that takes no heed of basic human rights guarantees. Both armed group violence and counter-terrorism measures have claimed tens of thousands of lives, with violence continuing to this day, claiming hundreds of lives each year (see below, *Continuing violence*). Many more have been injured or maimed, or suffer the emotional, social and economic consequences of the violence. After years of impunity and lack of investigations,

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<sup>5</sup> Due to the lack of any effective official investigations into “disappearances”, there are no credible figures on the total number of “disappearances”. An official advisory commission on “disappearances” stated in 2005 that it had received 6,146 complaints from families claiming that their relatives had “disappeared” after arrest by the security forces. Other government authorities have advanced figures of between 5,000 to 7,000 complaints of “disappearance”. Amnesty International has received information on some 4,000 individual cases of “disappearance” between 1993 and 2002. Algerian human rights organizations estimate that the total number may be as high as 10,000 to 15,000. For a more extensive account of Amnesty International’s concerns on “disappearances” in Algeria see Amnesty International’s reports *Algeria: “Disappearances”: the wall of silence begins to crumble* (MDE 28/01/99), and *Algeria: Steps towards change or empty promises?* (MDE 28/005/2003), pp. 25 ff.



victims and their families have been left without justice or redress, often without knowing the truth about the crimes that have been committed against them.

## **The role of the DRS**

The DRS is an intelligence agency within the military which has existed in Algeria under different names since the country became independent in 1962. Formerly known as Military Security, it was renamed the Department for Information and Security in 1990. It is, however, still referred to as Military Security in some official documents, such as certain articles of the Code of Criminal Procedure, and in the media and among the public at large.

The DRS has been shrouded in secrecy. There is no publicly available official information on its mandate, powers or internal organization. The only available information about the DRS has emanated either from the testimonies of survivors of human rights violations, or from the accounts of former army officers published after they had deserted the Algerian army and sought political asylum in other countries. Testimonies of individuals who were detained by the DRS suggest that it is specialized in providing counter-terrorism intelligence and plays a key role today in interrogating individuals thought to possess information about terrorist activities.

Accounts by former DRS officers indicate that the service consists of three departments, two of which deal with internal intelligence matters, and a third with external ones. During the 1990s, the internal branches of the DRS reportedly set up local centres throughout the country, the Territorial Centres for Research and Investigation (Centres territoriaux de recherche et d'investigation, CTRI), which were at the forefront of so-called anti-terrorist operations. De facto, other branches of the army, as well as the police and gendarmerie, are said to have operated under the authority of the DRS and its senior commanders. In addition, the DRS apparently created sub-structures within the organization about which no written records were kept and whose composition and functioning remained unclear even to senior officers within the service. From early on in the conflict, these structures were allegedly responsible for carrying out extrajudicial executions of suspected FIS sympathizers and for "unofficial" missions relating to the infiltration of armed groups.

A body of evidence gathered by human rights activists, victims of human rights violations and their families points to the responsibility of DRS agents for systematic torture and large-scale extrajudicial executions of alleged sympathizers of the FIS during the 1990s.<sup>6</sup> There is recurrent mention in testimonies that arrests were carried out by officers thought to belong to the DRS, operating in plain clothes, sometimes with their faces hidden under balaclavas, and using unmarked vehicles. In countless cases, all trace of individuals arrested by officers of the DRS, or other security forces, have been lost in secret detention centres operated by the DRS. To this day, the fate and whereabouts of these "disappeared" remain unknown.

There has also been an increasing number of allegations by former army officers that the DRS was not only a driving force behind the most serious crimes attributed to the security forces,

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<sup>6</sup> See, for example: Salah-Eddine Sidhoum and Algeria-Watch: *Algérie: La machine de mort*. October 2003.

but that its agents also infiltrated and manipulated armed groups as part of a deliberate strategy to escalate violence against civilians and so undermine popular support for such groups. As the grave and widespread abuses committed by armed groups during the 1990s have not been investigated, these allegations too remain uninvestigated. A former senior army figure has publicly admitted that armed groups were infiltrated by security forces as part of a military strategy,<sup>7</sup> but no efforts have been made by the Algerian authorities to clarify the role of the security forces, and in particular the DRS, in the conflict. Recent amnesty measures may prevent any impartial investigations for years, if not decades, to come.

### ***The 2006 amnesty laws***

Successive measures taken by the Algerian authorities ostensibly to bring closure to the years of violence have failed to address pressing human rights concerns and have granted wide-ranging impunity to perpetrators. In Amnesty International's view, the measures are likely to facilitate continuing torture and other ill-treatment in Algeria, rather than contribute to ending these violations.

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.

Previous measures of exemption from prosecution and amnesty for armed group members passed in 1999 and 2000 have led, in effect, to extensive impunity for members of armed groups.<sup>8</sup> In February 2006, a series of decrees was passed to prolong the scope of earlier measures of amnesty and exemption from prosecution for armed groups and to provide for comprehensive impunity for the security forces. These measures, which were accompanied by offers of compensation to some categories of victims and economic and social support for families of former armed group members, have been branded as the definitive solution to addressing the legacy of the conflict and as a way to put an end to continuing violence. They were passed by presidential decree and based on a framework document, the Charter for Peace and National Reconciliation, which was adopted in a national referendum in September 2005. The Charter explicitly denied that state security forces had committed grave and widespread human rights violations in the exercise of their duties but did not mention an amnesty.

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<sup>7</sup> General Khaled Nezzar, Minister of Defence between 1990 and 1993, commented on the testimony of former DRS officer Mohamed Samraoui during a trial in Paris in 2002 as follows: "Now, concerning infiltration, this is a task of all secret services. [...] It has happened throughout the entire world. [...] You have said that it was necessary to infiltrate these people [the Armed Islamic Groups (Groupes islamiques armés, GIA)], to crush them because they represented a threat to the country. I entirely agree with you." See Habib Souaïdia (ed): *Le procès de La Sale Guerre*. Paris 2002, p. 242.

<sup>8</sup> This conclusion was reached after Amnesty International looked in detail at the way these measures had been applied, see *Algeria: Truth and justice obscured by the shadow of impunity* (AI Index: MDE 28/011/2000), November 2000.

Amnesty International has repeatedly expressed concern about these measures.<sup>9</sup> Its principal concern relates to the fact that the laws of February 2006 provide for impunity for crimes under international law which have been committed by both armed groups and state agents. As such, the measures contravene fundamental principles of international law and amount to a final denial of truth and justice for victims and their families.

While recognizing the responsibility of armed groups for grave human rights abuses, the “Decree implementing the Charter for Peace and National Reconciliation” allows for the exemption from prosecution, or the release under an amnesty, of anyone wanted for, convicted of, or detained on terrorism-related charges. Those charged with or convicted of having “committed, been complicit in or instigated collective massacres, rape, or the use of explosives in public places” are excluded from these provisions, but may still benefit from measures of clemency or pardon. The decree specifies that these measures do not apply to those wanted for, charged with or convicted of terrorist activities abroad which were not directed against Algerian interests.

According to official statements, more than 2,000 individuals who had been charged with or convicted of involvement in terrorist activities were freed from detention in March 2006. Among those released were known armed group leaders, who had been imprisoned for years, and individuals convicted of committing terrorism-related offences inside Algeria or abroad. Others had been charged in connection with alleged terrorist activities, but not yet tried. Amnesty International is concerned that members of armed groups who have not yet been tried and who may have committed crimes under international law may have been exempt from prosecution under the terms of the law. This is because, on the one hand, the criteria for exclusion are not sufficiently specific to ensure that the perpetrators of crimes under international law, such as killings not qualified as massacres, or torture, will be prosecuted. On the other hand, the measures have been applied in a non-transparent way with almost no information provided about their practical implementation, notably the process for determining eligibility for exemption from prosecution, raising fears that they are being applied arbitrarily. The authorities have not published the names of those who have benefited from either exemption from prosecution or amnesty.

As far as the security forces are concerned, the “Decree implementing the Charter for Peace and National Reconciliation” provides for a comprehensive impunity. Article 45 of the decree prevents any prosecution in Algeria of members of the security forces by stating that:

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

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<sup>9</sup> See, for example, the joint declaration with three other international human rights organizations: *Algeria: New Amnesty Law Will Ensure Atrocities Go Unpunished*, 1 March 2006, AI Index: MDE 28/005/2006.

and Popular Republic of Algeria. The competent judicial authorities are to summarily dismiss all accusations or complaints.<sup>10</sup>

These provisions indicate that all complaints against the security forces will be inadmissible, regardless of the severity of the crimes they may have committed. In addition, nowhere does the decree specify the temporal scope of the measure, raising concerns that the decree may serve to grant prospective impunity to the security forces even for crimes committed following the adoption of the decree. This is compounded by the provisions of Article 46 which penalize public criticism of the conduct of state agents with up to five years' imprisonment, or 10 years in the case of a second offence. The provisions of Article 46 pose a direct threat against anyone seeking to publicize human rights violations or generate debate about them, and are likely to discourage victims of state abuses and their families from lodging formal complaints even about ongoing violations. Amnesty International fears that implementation of the provisions of Articles 45 and 46 will effectively amount to an abrogation of Algeria's international obligations to investigate human rights violations and to punish their perpetrators, depriving victims and their families of any effective remedy.

### ***Continuing violence***

No official statistics have been released on the number of people killed in Algeria since 1992. The authorities have recently admitted that official figures which they had given during the height of the violence deliberately understated the extent of killings.<sup>11</sup> During the campaign for the referendum on the Charter for Peace and National Reconciliation, the authorities upwardly revised the official figures of people who had been killed in the conflict to 200,000. Prime Minister Ahmed Ouyahia admitted in March 2006 that as many as 1,000 people had been killed in 1998 in a single attack on civilians in Ramka, near Relizane in western Algeria, although official reports at the time claimed that there had been no more than 150 deaths.<sup>12</sup>

According to reports of killings in the Algerian media, the level of violence has fallen continuously in recent years. These reports, however, still rely exclusively on security sources and cannot be independently verified. During 2005, some 400 killings were reported in Algerian newspapers as a result of continuing violence, including dozens of civilians. In the first four months of 2006, some 140 people were reportedly killed, among them over 60 civilians. Killings are committed by armed groups during attacks on military targets, and suspected active members of armed groups continue to be killed during operations by the security forces.

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<sup>10</sup> Ordonnance no. 06-01 of 27 February 2006 on the implementation of the Charter for Peace and National Reconciliation, published in the Algerian official bulletin (*Journal Officiel*) of 28 February 2006.

<sup>11</sup> Prime Minister Ahmed Ouyahia told journalists in Algiers in March 2006 : "We have hidden the truth because one cannot lead a battle while admitting defeat. Those who were committing collective massacres did not do so to massacre, but to make the international community rise against us." See: Massacre de Ramka : 1000 morts! In: *El Watan*, 22 March 2006.

<sup>12</sup> Ibid.

According to official figures released by the authorities in March 2006, some 800 members of armed groups remain active.<sup>13</sup> The official figures for remaining armed group members have varied between 400 and 800 over the past five years, with no consistent indication of a trend in the evolution of numbers. The amnesty laws, which offer exemption from prosecution to armed group members who give themselves up within six months after the passing of the laws, apparently have so far not led to a substantial reduction in numbers.

Most of the residual armed factions are alleged to belong to the Salafist Group for Preaching and Combat (Groupe Salafiste pour la Prédication et le Combat, GSPC), which is considered to be the principal remaining armed group within Algeria. The GSPC is also the only group which is reported to continue to pursue the political objective of overthrowing the government, although its leadership is not accessible and the authenticity of statements published, for example, on the group's website, cannot be verified.

Observers have also pointed out that members of the GSPC and other armed factions are involved in various criminal activities, such as smuggling, protection rackets and money-laundering.<sup>14</sup> Reports in the Algerian media often describe violent incidents as "terrorism", regardless of whether they may be linked to such criminal activity, as in the case of the recent killing of 13 customs officers in southern Algeria.<sup>15</sup> In most cases of reported killings, it is therefore impossible to discern the rationale for the violence.

Despite current efforts for "national reconciliation", the Algerian authorities have expressed firm intentions to persist with their military campaign to root out surviving armed factions who refuse to surrender under the terms of the amnesty laws, and their supporters.<sup>16</sup> The military campaign is accompanied by continuing arrests of alleged armed group members and those believed to support them. During the first five months of 2006, according to press reports alone, more than 100 people were arrested on suspicion of alleged terrorist activities. In light of the continuing violence, it is clear that such arrests will continue to take place. Unless effective safeguards are introduced, those arrested will continue to be at risk of torture or ill-treatment while detained by the DRS.

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<sup>13</sup> The figure was given by Interior Minister Noureddine Zerhouni. See: "Quel est le véritable nombre de terroristes?" In: *El Watan*, 20 March 2006.

<sup>14</sup> See, for example: International Crisis Group: *Islamism, violence and reform in Algeria: Turning the page*, 30 July 2004.

<sup>15</sup> The attack was reported on the Algerian news agency APS, see "Treize douaniers tués dans une embuscade près de Ghardaïa", AFP, 7 April 2006. The Algerian army retaliated by killing between 10 and 15 members of an armed group. See: "Algerian forces kill suspected militants in reprisal for ambush", AFP, 9 April 2006.

<sup>16</sup> Official statement by the National Commission for the Implementation of the Charter for Peace and National Reconciliation, as quoted in "Charte pour la paix: maintenir la pression contre le terrorisme", AFP, 23 April 2006.

### **3. The DRS: a force above the law**

Amnesty International's research has revealed particular patterns of violations in the cases of arrests or detentions by the DRS. The most serious violations reported to Amnesty International have been committed in the cases of individuals arrested or detained by the DRS on suspicion of terrorist activity. Suspects are routinely held in undisclosed places of detention, without any contact with the outside world, and there are persistent reports of torture or ill-treatment. Amnesty International is concerned that arrests and detentions by the DRS routinely violate key safeguards and procedures established under Algerian and international law to protect detainees from abuse.

At the same time, although allegations of beatings, intimidation and other forms of ill-treatment continue to be frequently reported, Amnesty International has received fewer reports of torture in the custody of police and gendarmerie. According to Algerian lawyers, some safeguards under Algerian and international law are increasingly adhered to by police and gendarmerie. For example, detainees held by these forces have in some cases reportedly being informed of their rights after having been arrested; and they appear more frequently to be able to communicate with their families while held in a police or gendarmerie station.

That there has not been a similar improvement in the practices of the DRS suggests that the service continues to enjoy special powers which prevent any enforcement of procedures under Algerian law. Consequently, although fewer arrests by the DRS are reported today than at the height of violence, they are characterized by the same lack of safeguards that allowed systematic torture to be perpetrated during the 1990s and facilitated thousands of "disappearances".

#### ***The DRS as counter-terrorism police***

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 Ministry 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, known as *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 (see below, *Excessive duration of garde à vue*).

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>17</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.

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<sup>17</sup> Article 15 of the Code of Criminal Procedure.

According to Amnesty International's research, 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.

In recent years, the terrorism-related detentions appear to have been increasingly concentrated on the capital, Algiers. Detainees generally report having been detained and interrogated at the Antar centre, a barracks which was reportedly one of the principal command centres of the DRS during the 1990s. Suspects who are arrested in other parts of the country are generally transferred to the Antar barracks within the first few days of detention and later brought before a prosecutor and a judge at the court of Algiers.

### ***Lack of oversight and accountability***

The judicial police, including military personnel appointed to exercise these functions, operates under the authority of the public prosecutor.<sup>18</sup> However, Amnesty International's research suggests that officers of the DRS operate, in effect, without oversight by the prosecutor or any other civilian authorities.

Unlike in the case of arrests carried out by police or gendarmerie officers, prosecutors seem not to be kept informed of arrests carried out by the DRS and apparently do not visit DRS barracks which are used as places of *garde à vue*. As a consequence, no civilian institution appears to oversee the arrest and detention procedures of the DRS, to ensure that they comply with provisions of Algerian law designed to protect detainees from torture and secret detention (see below, *Secret places of detention* and *Medical examinations*). In light of these shortcomings, recent and forthcoming changes to the Algerian Code of Criminal Procedure, which may contribute to improving the protection of detainees in general, are insufficient in affording greater protection to individuals detained by the DRS.

Officers of the DRS also appear to benefit from systematic impunity. In cases where families, lawyers or detainees themselves have made complaints to the prosecutor about violations committed by DRS officers during arrests or detention, these appear not to have been investigated. These complaints allege crimes punishable under Algerian law, such as torture, arbitrary detention, or failure to notify superiors of arbitrary or illegal detention.

The Algerian authorities have in recent years provided some limited information on a handful of cases where police or gendarmerie officers have been investigated for human rights violations, including torture, although, to the knowledge of Amnesty International, none of these were prosecuted using new torture provisions introduced into the Penal Code in 2004. Although the introduction of these provisions is a positive step, Amnesty International is

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<sup>18</sup> Articles 12 and 16 of the Code of Criminal Procedure.

concerned that they do not so far seem to have been implemented. Given the continuing secrecy surrounding the operations of the DRS and the formidable power it enjoys in practice, it appears unlikely that the provisions will be used any time soon to prosecute officers of the DRS.

## **4. Arrest and detention**

In investigating terrorism-related arrests by the DRS, Amnesty International has found recurring evidence of grave violations of Algerian and international law which heighten the risk that detainees may be subjected to torture or ill-treatment.

### ***Violations of procedures for arrests***

In most cases, arrests are reportedly carried out by plain-clothes officers of the DRS who do not identify themselves and use vehicles not marked as belonging to the security forces. They do not inform the suspects or their families of the reasons for their arrest. Once taken into custody, detainees are not informed of their right to communicate immediately with their families, or to a medical examination at the end of *garde à vue*. The families of those arrested are generally not informed of detentions by the DRS, or transfers to DRS custody, or of the place of detention. As long as detainees are held by the DRS, families are not able to communicate with them or to visit them.

These practices violate key safeguards under Algerian and international law for protection from arbitrary or secret detention and from torture and other ill-treatment. According to Article 51 *bis* of the Code of Criminal Procedure, the arresting officers have to inform anyone who is taken into detention of their rights during *garde à vue*. The following article (Article 51 *bis* 1) provides that those held in *garde à vue* must be given all means to communicate immediately with their family and to receive visits from them.

Such safeguards are also enshrined in international law. Principle 13 of the Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment (Body of Principles), adopted by the UN General Assembly in 1998, stipulates that the arresting authorities must inform any person taken into detention promptly of “an explanation of his rights and how to avail himself of such rights”. Principle 16(1) further specifies that:

Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

Under international law, detainees are entitled to access to legal counsel promptly after arrest; a safeguard which is not enshrined in Algerian law. In light of the extensive duration of *garde à vue* in terrorism-related cases, the lack of access to legal counsel during this period violates



Algeria's obligations under international law and heightens the risk of torture or ill-treatment (see below, *Lack of contact with the outside world*).

There is no explicit requirement under Algerian law for arresting officers to identify themselves, or to inform an individual of the reasons for their arrest. In this respect, Algerian law is not in line with international law. The International Covenant on Civil and Political Rights (ICCPR), which Algeria has ratified, states in Article 9(2): "Anyone who is arrested shall be informed, at the time of the arrest, of the reasons for his arrest and shall be promptly informed of any charges against him." Principle 12 of the Body of Principles provides that detainees should be informed, among other things, of the reasons for their arrest and the identity of the arresting officers.

### ***Failure to notify civilian authorities***

Families and lawyers who contacted the public prosecutor while individuals were held by the DRS say that they were unable to receive official confirmation that the individuals had been taken into detention. They also report that they did not receive any information from the public prosecutor as to the reasons why the arrests had been carried out and where the person was being detained.

The family of Mohamed Harizi, for example, remained without news of him for over two years, although they lodged a complaint with the public prosecutor the day after his arrest in late 2002.

Mohamed Harizi, born in 1974, had left Algeria in 1992 and travelled to Bosnia and Herzegovina and to training camps in Pakistan, before fighting alongside the Taleban in the war in Afghanistan. He returned to Algeria voluntarily in August 2002 without, at first, encountering any problems.

He was arrested on 15 December 2002 at his family's home in Mahdia, in the province of Tiaret. According to his family, security forces stormed the house at 11.30 at night. They did not identify themselves or present a warrant. The next day, the family lodged a complaint with the public prosecutor, seeking information as to who had arrested Mohamed Harizi and why, and asking that the manner in which the arrest was carried out be investigated. According to Amnesty International's information, no investigation was ordered or carried out following the complaint. Until Mohamed Harizi was presented to the judicial authorities in early 2005, his family had not received any information as to which security service had arrested him or why, nor where he was being detained.

Mohamed Harizi was held in secret detention at the Antar barracks in Algiers, part of which are used by the DRS as a detention centre, for two years and 46 days without charge or trial. He reported that he had been tortured by DRS officers with electric shocks and the *chiffon* method (see page 24 for an explanation of the term) during the initial months of detention. Before being brought before a court, he was forced to sign a declaration that he had been treated humanely and had not been subjected to any form of ill-treatment. He was later tried and sentenced on terrorism-related charges, but released on 3 March 2006 and informed that

all judicial proceedings against him would be stopped in the context of “national reconciliation” measures.

The fact that families are generally not able to obtain any information from the public prosecutor suggests that the judicial authorities are not systematically kept informed of arrests carried out by the DRS, or that they are reluctant to disclose information about such arrests. As a consequence, it would seem that the public prosecutor does not effectively oversee detention in terrorism-related cases, as required by law. 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 reality however, detainees suspected of terrorist activities are routinely held by the DRS for 12 days, or even longer, apparently without authorization by the prosecutor. According to Article 51, such violations constitute arbitrary detention and entail criminal responsibility of the perpetrators.

Article 9(1) of the ICCPR provides that arrests may only be carried out “on such grounds and in accordance with such procedures as are established by law”. Holding individuals without acknowledging their whereabouts is in violation of Article 10 of the Declaration on the Protection of all Persons from Enforced Disappearance, which states:

Accurate information on the detention of ... persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

### ***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 of time. In addition, the time limits defined under Algerian law are frequently violated by the DRS.

### ***Excessive duration of garde à vue***

According to Article 51 of the Code of Criminal Procedure, judicial police may hold suspects for a maximum of 48 hours in *garde à vue*, after which they have to be either charged or released. However, this upper limit is extended to four days if the detainee is held on suspicion of “undermining the security of the state”. Upon written authorization by the public prosecutor, it may be extended to 12 days, if the suspect is detained on allegations of “terrorist or subversive acts”.

The 12-day limit is one of several elements introduced under emergency legislation in 1992, which were incorporated into permanent legislation in 1995. By standards defined under international law, as is shown below, 12 days are an excessive period of detention without

judicial review, in violation of international law. The 12-day period raises additional concerns as Algerian law does not allow detainees access to legal counsel during this time.

Article 9(3) of the ICCPR states that anyone arrested or detained on a criminal charge should be brought “promptly” before the judicial authorities. Article 9(4) guarantees the right of anyone “who is deprived of his liberty by arrest or detention... to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”. The UN Human Rights Committee has specified that this right applies at all times, including during states of emergency<sup>19</sup> and that delays in bringing anyone arrested or detained before a judge or other officer authorized by law to exercise judicial power must not exceed a few days.<sup>20</sup> The UN Special Rapporteur on Torture has stated that “those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention which, in any case, should not exceed a period of 48 hours.”<sup>21</sup>

As existing safeguards under Algerian law designed to protect detainees who have not been charged are generally not respected by the DRS (see Chapter 4 below, *Lack of contact with the outside world*), the detainee’s physical safety is put in grave danger as a result of the excessive time limit allowed for *garde à vue*. Amnesty International has received reports of torture and other ill-treatment of detainees during the first 12 days of detention (see, for example, the case of Amar Saker on page 24 below).

## Violations of time limits

In addition, while the limits of *garde à vue* appear generally to be respected in ordinary criminal cases, some detainees are held by the DRS even beyond 12 days. Amnesty International has received information on cases where the officially recorded arrest date was at variance with the dates given by the detainees themselves or their families, apparently to cover up the fact that the time limit had been exceeded by one or two days. In some cases, however, the legally-permitted duration of *garde à vue* was exceeded by several months, and in one case by two years and 34 days. This is a serious breach of Algerian law and constitutes arbitrary detention, as punishable in accordance with Article 51 of the Code of Criminal Procedure and Articles 107 and 291 of the Penal Code.

In its memorandum to the Algerian President, Amnesty International documented six recent cases where detention exceeded by weeks or months the legal limit of *garde à vue*. In four of these cases, including the cases of M’hamed Benyamina (see page 29 below), and Mohamed Harizi, who was held in secret detention for over two years (see page 15 above), detainees were formally placed under control orders by the Ministry of the Interior.

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<sup>19</sup> Human Rights Committee, General Comment No. 29, para 16. UN Document CCPR/C/21/Rev.1/Add.11 (2001).

<sup>20</sup> Human Rights Committee, General Comment No. 8, para. 2. UN Document HRI/GEN/1/Rev.5 (1997).

<sup>21</sup> See Report of the UN Special Rapporteur on Torture, E/CN.4/2003/68, para. 26(g).

Control orders require an individual to remain at a fixed place of residence and are supposed to be an alternative to imprisonment or detention. 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 to conceal grave breaches by the DRS of Algerian and international law.

Nouamane Meziche was held in secret detention by the DRS, without contact with the outside world, for one and a half months, during which time he was officially subjected to a control order by the Minister of the Interior requiring him to remain at a fixed address.

Nouamane Meziche, aged 35 and a dual Algerian and French national, was arrested upon arrival at Algiers airport on 5 January 2006. He is resident in Germany and has reportedly been questioned by German police on his alleged links with the perpetrators of the attacks on the World Trade Centre in September 2001.

On 5 January 2006 he flew in to Algiers from Frankfurt in Germany, and was arrested by border police at Houari Boumediene airport in Algiers. According to his lawyer, no arrest warrant had been issued against Nouamane Meziche in Algeria prior to his arrest, and he had not been sentenced in his absence.

He was held in harsh conditions at the barracks of Antar for 43 days where he says he was slapped in the face and insulted by DRS officers during questioning. While he was detained there, a control order was issued by the Minister of the Interior which did not specify the address where he was to remain. Despite repeated requests by his family and a complaint by his lawyers to the public prosecutor, they did not receive any information about his place of detention or the reasons for his arrest until he was brought before the judicial authorities on 19 February 2006 and charged with "belonging to a terrorist group operating abroad". On 4 March 2006 he was released from detention and informed that all judicial proceedings against him would be ended, in the context of measures for "national reconciliation". The violation of the time limit and procedures for *garde à vue* are not known to have been investigated.

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<sup>22</sup> 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.

Amnesty International considers that these sweeping powers, without the possibility of judicial review, contravene guarantees under Algerian law for protection from arbitrary detention and undermine the right to liberty as enshrined in Article 9(1) of the ICCPR which

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<sup>22</sup> Presidential Decree No. 92/44, published in the Algerian official bulletin (*Journal Officiel*) of 9 February 1992.

prohibits arbitrary arrest or detention. Furthermore, the UN Working Group on Arbitrary Detention has stated that:

the use of 'administrative detention' under public security legislation [...] resulting in a deprivation of liberty for unlimited time or for very long periods without effective judicial oversight, as a means to detain persons suspected of involvement in terrorism or other crimes, is not compatible with international human rights law.<sup>23</sup>

Amnesty International is concerned that the legislation on the state of emergency, which should be a temporary measure, was extended in 1993 and has not been reviewed since. Article 4 of the ICCPR allows for the declaration of a state of emergency during "a public emergency which threatens the life of the nation". However, the Human Rights Committee has stated that a "fundamental requirement for any measures ... as set forth in article 4, paragraph 1, is that such measures are limited to the extent strictly required by the exigencies of the situation. This requirement relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation resorted to because of the emergency." It is therefore essential that states of emergency are limited, and that measures taken are proportionate to the exigency of the situation. The Human Rights Committee has further specified "The prohibitions against [...] unacknowledged detention are not subject to derogation. The absolute nature of these prohibitions, even in times of emergency, is justified by their status as norms of general international law."<sup>24</sup>

### ***Lack of contact with the outside world***

Ensuring contact with the outside world is an important safeguard for the protection of the rights of all detainees. The right of detainees to communicate with their families and receive visits from them, as well as the right to a medical examination at the end of the legally-permitted duration of *garde à vue*, is guaranteed under Article 51 *bis* 1 of the Code of Criminal Procedure.

In practice, however, suspects are routinely held by the DRS without contact with the outside world, a practice known as *incommunicado* detention. During this time they are denied contact with their families and access to legal counsel and medical care, even when the duration of *garde à vue* is significantly exceeded, in violation of Algerian and international law. Furthermore, Algerian law does not grant detainees access to lawyers during *garde à vue*. As those suspected of terrorist activities may be held legally for up to 12 days before they are charged or released, the lack of access to a lawyer violates international law (see below, *Lack of access to legal counsel*).

Principle 19 of the Body of Principles provides that: "[a] detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations". In

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<sup>23</sup> Report of the Working Group on Arbitrary Detention, E/CN.4/2005/6, para. 77.

<sup>24</sup> Human Rights Committee, General Comment No. 29, August 2001, para. 13(b).

accordance with Principle 15 of the Body of Principles “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days”.

Restrictions and delays in granting access to the outside world are permitted only in very exceptional circumstances and for short periods of time. In its General Comment No. 20 on Article 7 of the ICCPR, the UN Human Rights Committee has specified that detainees should be given “prompt and regular access ... to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.” Principle 7 of the Basic Principles on the Role of Lawyers provides that “all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.”

The UN Special Rapporteur on Torture has emphasized that access to a lawyer within 24 hours is a key safeguard for preventing torture. He has repeatedly called for a total ban on incommunicado detention where detainees are most at risk of torture and other ill-treatment, stating that “Torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal and persons held in incommunicado detention should be released without delay.”<sup>25</sup>

At its 61<sup>st</sup> session in 2005, the UN Commission on Human Rights reiterated that “prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment.”<sup>26</sup>

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

Detainees suspected of terrorist activities appear to be routinely held in facilities which are not officially recognized places of detention. In all cases about which Amnesty International has received information in recent years, detainees reported that they had been held for most of the time in barracks of the DRS. According to Amnesty International’s information, several such barracks continue to be used by the DRS to detain suspects who have not been charged. However, most detainees held for more than a few days appear to be detained at, or transferred to, the Antar barracks in the Hydra district of Algiers.<sup>27</sup> They are situated in an area surrounded by forest, concealed from public view and not accessible to the public.

Detainees are generally taken to the barracks in cars not marked as belonging to the security forces. Upon approaching the barracks, detainees are reportedly forced by the arresting officers to lie or bend down to conceal the place of detention from the detainees themselves. The same measures are taken when they are transferred out of the barracks. Amnesty

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<sup>25</sup> Report of the UN Special Rapporteur on Torture to the UN General Assembly, in UN Document A/56/156, July 2001, para. 39(f).

<sup>26</sup> Resolution 2005/39, 19 April 2005, para. 9.

<sup>27</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.

International has spoken to one former detainee who reported that he was blindfolded with rubber tubing during transport to the barracks and during each transfer between his cell and the interrogation room. Several detainees have reported that they were unaware of where they were being held for the entire duration of their detention and never informed of this by their interrogators, even if their detention lasted for months.

The place of detention is also kept from the families of the detainees. Families were generally unaware where their relatives were being held and, upon enquiring with police or gendarmerie, were told that the person was not in detention, that they did not know where the person was held, or that the person was detained by the DRS, but were not given any 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 where their relatives were being held.

In very few cases where detainees were held in DRS barracks outside of Algiers, families have gone to the barracks on their own initiative and obtained oral confirmation from DRS personnel that their relative was being held there. However, this does not amount to an official recognition of the detention, and Amnesty International is not aware of any family being able to communicate with or visit a relative who was detained in barracks of the DRS. Consequently, these detainees are still being held in an unofficial place of detention and without contact with the outside world, in violation of international law.

Article 52 of the Code of Criminal Procedure provides that all places of *garde à vue* can at any moment be inspected by the prosecutor to ensure that they satisfy the guarantees provided under Algerian law. According to Amnesty International's information, such visits are never carried out to barracks of the DRS, which are used as detention facilities. During its meeting with Ministry of Justice officials in May 2005, Amnesty International was told that all detention facilities can be inspected by prosecutors in accordance with the provisions of the Code of Criminal Procedure, including detention facilities used by the DRS. However, officials were unable to provide any concrete information to show that such visits had ever been carried out to DRS barracks.

There are various indications that DRS barracks are not officially recognized places of detention. For example, reports of interrogations by the DRS never mention the place of detention. The Code of Criminal Procedure only mentions gendarmerie and police stations as places of *garde à vue*.<sup>28</sup> Amnesty International has not been able to receive a list of all officially recognized places of detention, despite repeated requests to the authorities.

During its most recent visit to Algeria, Amnesty International requested information from the Ministry of Justice as to which detention facilities are currently used by the DRS, but no such information has been received. Ministry of Justice officials stated that they did not have responsibility for barracks, which are under the authority of the Ministry of Defence. They assured Amnesty International's delegates, however, that all places used for *garde à vue* could be visited by the public prosecutor.

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<sup>28</sup> Article 52 of the Code of Criminal Procedure.

Testimonies of former detainees at DRS barracks suggest that they are not visited by the public prosecutor. Human rights lawyers in Algeria have also told Amnesty International that they are not aware of a prosecutor ever having visited barracks operated by the DRS. Amnesty International believes that DRS barracks are effectively secret places of detention where detainees are not able to enjoy the protection afforded to them under Algerian and international law. There have also been reports that secret detention facilities in Algeria are likely to have been used for the detention of individuals who were subjected to extraordinary renditions of detainees alleged to be involved in international terrorist activity.<sup>29</sup>

The practice of holding detainees in secret, with no contact with the outside world, places detainees outside of the protection of the law, denying them important safeguards and leaving them at risk of torture and other ill-treatment. International human rights standards provide that detention should only be allowed in officially recognized places of detention and should be prohibited elsewhere. Article 10(1) of the Declaration on the Protection of All Persons from Enforced Disappearances, adopted by the UN General Assembly in 1992, states: "Any person deprived of liberty shall be held in an officially recognized place of detention."

The UN Special Rapporteur on Torture has stated:

The maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by a detainee during interrogation at official locations should not be admitted as evidence in court.<sup>30</sup>

The continued use of secret places of detention is of particular concern in a country like 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 ruled 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 ill-treatment, and by denying him access to a court. 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 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.

## **Conditions of detention**

According to testimonies from former detainees at the Antar barracks, detention facilities there are poor and dirty; detainees are held in small, poorly ventilated cells without access to

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<sup>29</sup> *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*. Draft report – Part II (Explanatory memorandum); Dick Marty, Rapporteur of the Committee on Legal Affairs Human Rights of the Parliamentary Assembly of the Council of Europe, para. 55.

<sup>30</sup> UN Document A/56/156, July 2001, para. 39(d).



daylight; they are forced to sleep on concrete floors, sometimes with a blanket or simple mattress, and are allowed little or no access to toilets and showers.

Such conditions constitute a breach of Article 52 of the Code of Criminal Procedure which provides that facilities for *garde à vue* should be appropriate to preserve human dignity during detention, reflecting the provisions of Article 10 of the ICCPR.

The Working Group on Arbitrary Detention has stated that conditions of detention not compatible with human dignity may violate the right to a fair trial. In its 2005 report to the Commission on Human Rights, the Working Group stated that “pre-trial detention becomes arbitrary where the conditions are such as to create an incentive for self-incrimination, or – even worse – to make pre-trial detention a form of advance punishment in violation of the presumption of innocence”.<sup>31</sup>

## **5. Torture and other ill-treatment**

### ***Reports of torture and ill-treatment***

The ICCPR and the Convention against Torture, to which Algeria is a state party, prohibit torture and other cruel, inhuman and degrading treatment or punishment at all times and in all circumstances.

Amnesty International has received dozens of reports of torture and other ill-treatment of individuals who were held by the DRS in connection with alleged terrorist activity. The number of cases reported to Amnesty International may only reflect a fraction of the actual violations committed. The secrecy surrounding the operations of the DRS make case information especially hard to come by and the fact that former detainees often continue to fear for their safety prevents many from speaking out.

For example, the testimonies of former detainees often indicate that they were detained along with others who were also subjected to torture or ill-treatment, but it is generally impossible to obtain detailed information on these cases. In addition, the vast majority of terrorism-related arrests are carried out in remote rural areas beyond the reach of human rights activists. Cases of suspects who are detained for a period and later released without charge would not come to the attention of a lawyer, as lawyers may only get involved once a suspect is charged and a judicial investigation opened. Perhaps most importantly, those who suffer abuses frequently report that they have been threatened or intimidated and often do not wish to disclose details of their treatment for fear of reprisals against themselves or their families. Amnesty International has received several reports of torture or ill-treatment where the individuals concerned preferred the information not to be publicized. Those who are released after being subjected to torture or ill-treatment say they fear that they may be arrested again, while those who are subsequently tried often hope for a lighter sentence if they do not speak out about the treatment to which they have been subjected.

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<sup>31</sup> UN Document E/CN.4/2005/6, 1 December 2004, para. 70.

According to the testimonies of former detainees, they were generally tortured and otherwise ill-treated during interrogation at the Antar barracks while held there without any contact with the outside world. Detainees have been detained at Antar for periods ranging from a few days to several months, and in one case over two years. In most cases, detainees reported that they were tortured during the initial days, weeks or months of detention.

The most frequently reported methods of torture include beatings, electric shocks, and the method known as *chiffon* in which the victim is tied down and forced to swallow large quantities of dirty water, urine or chemicals through a cloth placed in their mouth. Detainees have also reported that they had been undressed and humiliated, beaten on the soles of their feet (a method known as *falaka*), or suspended by the arms from the ceiling for prolonged periods of time until they claimed they had "remembered" something. In some cases, detainees reported that they had been threatened that female family members would be arrested and raped.

Detainees say they were tortured or otherwise ill-treated to force them to admit to being a member of an armed group, to having supported their activities, or to having established links with Algerians abroad or with international terrorist networks. In some cases, detainees said that their interrogators were trying to make them admit to knowing particular individuals or to having been involved in certain activities; in other cases they were asked more generally to provide information about themselves and their activities, and the people they knew. The interrogations focused on armed group activities inside Algeria, as well as on alleged links with Algerians abroad, or with members of international terrorist networks.

In virtually all cases where detainees were later charged with terrorism-related activities, they reported that, before being brought before a judge, they were forced to sign or thumb-print interrogation reports which they were not allowed to read. Some detainees reported that they were forced to sign the papers under the 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 reportedly given the reports after having been forced to sign them and threatened that they would be taken back to the barracks if they denied their statements in court.

In several cases, lawyers discovered that among the papers signed or thumb-printed by the detainee before they were brought before the judicial authorities were declarations that they had been treated well in detention and not been subjected to torture or ill-treatment. Such a procedure is not set out in Algerian law and officials at the Ministry of Justice told Amnesty International that they were unaware of such a practice. Amnesty International is concerned that these declarations may be used to cover up violations committed by DRS officers, or to exert pressure on detainees who have been subjected to torture or ill-treatment not to declare this in court.

Amar Saker, a 33 year-old farmer from Skikda, eastern Algeria, was arrested on 19 February 2005 by three officers of the DRS near his house in Tamalouz, Skikda. He says he was put into a car, with his face covered and his hands tied behind his back, and taken to a DRS base

in Skikda. He reported that he was beaten with batons and that he was undressed and locked naked in a cell for the night with his hands tied behind his back.

The following day, he was reportedly flown to Algiers and taken to the Antar barracks in Hydra. He was confronted with details about his alleged involvement in activities of the GSPC. Amar Saker says that, after he denied the allegations, he was spat at, insulted and kicked by his interrogators. Later the same day he says he was taken to the basement and suspended from the ceiling with handcuffs for two or three hours. He said that, when he continued to deny the allegations against him, he was threatened that the interrogation style would change. That night, he says, he was undressed and detained in the toilet where he was forced to remain for the entire night and where he was seen by everyone who used the toilet during the night.

Amar Saker stated that he was further tortured using a range of methods, including beatings and electric shocks. He said that after the torture sessions there were numerous injuries to his body and blood coming from injuries to his chest and stomach. He reported that the injuries inflicted under torture were so serious that he was not sure whether he would survive. He was not given any medical treatment.

According to Amar Saker, on the fifth day of detention and torture, he began admitting to the accusations and the torture stopped for three days. Afterwards, he was reportedly suspended from the ceiling. He stated that he was asked once every hour whether he had remembered anything and only brought down if he said he had further information. He said that he was subjected to this treatment for three consecutive days.

Amar Saker reported that he had his fingers slammed in a drawer because he asked to read the report of his interrogation before signing it. He also stated that he was slapped in the face and told he should consider himself lucky that he had not been killed. Among the documents he was forced to sign before being presented to the judicial authorities was a declaration that he had been treated humanely during detention and not been subjected to any form of ill-treatment.

When Amar Saker was presented to a prosecutor and later to an examining judge on 5 March 2005, he reportedly bore clearly visible signs of injuries. He did not have access to legal counsel. He retracted the statements he had been forced to sign, explaining that he had been subjected to torture while detained by the DRS. The judge did not react to the allegations of torture and opened a judicial investigation against him on terrorism-related charges. Under torture, Amar Saker had admitted to being a link person between one of his brothers (who was living in Syria), a local armed group belonging to the GSPC, and members of an international network based abroad. He reportedly also admitted to transmitting messages, money and equipment – such as SIM cards and top-up cards for mobile telephones – and to providing logistical support to the armed group. He was further forced to admit to providing logistical support to introduce foreign fighters into Algeria, allegedly to provide training to the GSPC in the use of explosives.

On 7 March 2005, the prison administration wrote to the examining judge and the prosecutor, notifying them that Amar Saker's body bore traces of violence when he was admitted to the

prison. Some two weeks later, the judge instructed a psychologist to examine Amar Saker and to establish a report specifying the nature and extent of his injuries. Amar Saker says that he did not receive a visit from a psychologist, in accordance with the instructions of the judge. According to Amnesty International's information, a medical examination by a forensic doctor, as requested by his lawyer, did not take place either. Amar Saker was released on 4 March 2006 and informed that the judicial proceedings against him would be ended, in the context of "national reconciliation" measures. The signs of injuries from the alleged torture were reportedly still visible on his body nearly a year after he had been arrested, but no investigation into the allegations of torture is known to have been opened.

### **Medical examinations**

In no case known to Amnesty International have detainees been granted independent medical examinations while they were held in *garde à vue* by the DRS. Nor in any of the cases of alleged torture were detainees examined at their request by a forensic doctor of their own choosing at the end of their detention by the DRS. Where medical certificates are provided by the DRS when a person 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.

This violates the Code of Criminal Procedure, which grants detainees the right to a medical examination by a doctor of their choosing at the end of the *garde à vue* if a request is made, and to be informed of this right.<sup>32</sup> In practice, individuals detained by the DRS appear not to be informed of this right and, in most cases, remain unaware of it. Furthermore, Article 52 empowers the public prosecutor to designate a doctor to conduct a medical examination at any point during *garde à vue*, either on his own initiative or at the request of the family or detainee. As has been mentioned above, prosecutors apparently do not visit places of detention used by the DRS, and Amnesty International is not aware of any case in which a prosecutor ordered a medical examination of a detainee in the custody of the DRS.

International standards also provide that detainees have the right to be examined by a doctor and, when necessary, to receive medical treatment. Principle 24 of the Body of Principles states that "a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge". The Human Rights Committee has stated in its General Comment 20 that the protection of detainees requires that each person detained be afforded prompt and regular access to doctors.<sup>33</sup>

In a few exceptional cases, detainees were reportedly sent to the military hospital of Ain Naadja for medical treatment following torture. Amnesty International is concerned that in these cases, no mention of torture-related injuries seems to have been made in medical reports. Given that the reason for hospitalization was the torture or ill-treatment allegedly sustained by

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<sup>32</sup> Articles 51 *bis* 1 and 51 *bis* of the Code of Criminal Procedure.

<sup>33</sup> Human Rights Committee, General Comment No. 20, para 11. UN Document A/47/40.

the detainee it is surprising that this should not be remarked upon, particularly if the detainee was able to describe his or her experiences to the doctor. If these allegations are confirmed, such breaches of duty would constitute grave violations of medical ethics.

### ***Risk to returnees***

An increasing number of Algerian nationals who were resident abroad have been forcibly returned to Algeria on the grounds that they allegedly presented a security risk in another country. Some of the individuals concerned had been convicted of terrorism-related offences in another country and were due to be released after serving prison terms. Others were detained with a view to deport them but had not been convicted for their alleged involvement in terrorist activities. There have been forcible returns of such individuals from a number of countries, including Canada, France, Italy, Malaysia, the Netherlands and Spain. As reports of torture and other serious human rights violations in Algeria have diminished, a number of foreign governments have argued that there is no longer a real risk of such violations on return. Some governments have also obtained assurances from the Algerian authorities, before the individuals were returned, that they would not be tortured or otherwise ill-treated in Algeria.

Amnesty International has fundamental concerns about such use of “diplomatic assurances” (or “diplomatic contacts”) in returning foreign nationals, who are considered a security threat, to countries where they would be at risk of torture or ill-treatment.<sup>34</sup> All states are under the absolute obligation not to transfer any person to a country where they risk torture or ill-treatment (the principle of *non-refoulement*). This obligation applies to all states, and to all forms of involuntary transfer. It permits no exceptions arising from circumstances or from individual factors such as offences allegedly committed or danger posed by the individual concerned. “Diplomatic assurances”, memorandums of understanding and post-transfer monitoring cannot relieve a sending state of its obligation of *non-refoulement*, and are no substitute for the receiving state’s obligation to establish and implement properly functioning, system-wide safeguards against torture and other ill-treatment, as required by international law.

In the case of Algeria, Amnesty International is specifically concerned that the civilian authorities exercise little or no control over the DRS’s activities. Judicial authorities routinely overlook allegations of abuse by the DRS (see below, *The judicial process*), thus conferring systematic impunity on its officers, and do not visit the DRS’s detention centres to monitor the treatment of detainees, despite legal provisions to this effect. Consequently, any assurances given by Algeria’s civilian authorities to foreign governments that returnees who are at risk of arrest by the DRS will not be subjected to torture or ill-treatment must be seriously called into question.

The treatment of detainees after their return to Algeria is difficult to monitor. Many are unwilling to talk about their experiences and it is not therefore known what treatment they

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<sup>34</sup> See the Amnesty International document, *Memorandums of Understanding and NGO Monitoring: a challenge to fundamental human rights* (AI Index: POL 30/002/2006).

received. Amnesty International has been able to research a limited number of cases of returnees arrested on their return, where they or their lawyers have been willing to talk about their experiences. In general, they were held for up to 12 days and later released. A few were remanded in custody and later tried in connection with alleged terrorism-related offences.

While detained by the DRS, they were held in a secret place of detention, without any contact with the outside world, and questioned about their links either with domestic armed groups or with Algerians or presumed terrorist networks abroad.

Salaheddine Bennis, a 32-year-old Algerian who had apparently taken part in the armed conflicts in Bosnia and Herzegovina, and Afghanistan, was detained by the DRS for 19 months after he was forcibly returned from the Netherlands to Algeria in June 2003. During the 19 months, he was held at the Antar barracks in Algiers without any contact with the outside world. He reported that he had been tortured by DRS officers with electric shocks and the *chiffon* method during the initial months of detention and interrogated about his links with *al-Qa'ida*. In January 2005 he was charged with the offences of "belonging to a terrorist group operating abroad" and "apology for terrorist acts" and remanded in custody. While held at the Antar barracks, he had been placed under a control order by the Minister of the Interior requiring him to remain at a fixed address, apparently to cover up the fact that he was arbitrarily detained at an undisclosed location. He was released on 3 March 2006 and informed that all judicial proceedings against him would be stopped in the context of "national reconciliation" measures.

Some of those forcibly returned had been sentenced in Algeria in their absence on terrorism-related charges. Upon arrival in Algeria, they should have been presented to the prosecutor to allow them to appeal the *in absentia* sentence, and remanded in custody, in accordance with the Algerian Code of Criminal Procedure. However, Amnesty International has received information that in some of these cases the individuals concerned were arrested directly by the DRS and secretly detained, before being brought before the prosecutor and remanded in custody.

Families of those detained by the DRS upon their return are generally unable to receive any information from police, gendarmerie or the judicial authorities as to where their relatives are being detained and why they have been arrested. In some cases, families were unable to confirm even whether their relative had been arrested. DRS officers reportedly carried out some of these arrests on the runway of the airport and transferred the detainees directly to DRS barracks, without notifying border police that the individual had entered Algeria. If the country which had deported the individual had not notified the family, or deliberately kept the deportation secret, families were unable to ascertain even which country their relative was in, until the person was either released or brought before the judicial authorities.

In Amnesty International's view, there is a real risk that anyone handed over to the custody of the DRS may be subjected to torture or ill-treatment. By returning Algerian nationals in the face of substantial grounds to believe that they may be detained by the DRS and face torture or ill-treatment as a consequence, the sending state is violating the prohibition of *refoulement*, in violation of Article 7 of the ICCPR and Article 3 of the Convention against Torture. The

sending state also bears responsibility in any torture or ill-treatment, or any other serious human rights violations, that may occur as a consequence.

Amnesty International is further concerned at reports that, in some cases, such as that of Mourad Ikhlef described on page 37 below, the returnees were accompanied on their return by security officers of the sending country and handed over directly to the custody of the DRS. To the extent that these officers knew, or had reason to know, that there exists a risk of torture or ill-treatment in the custody of the DRS, such actions may also incur criminal liability.

In other cases, individuals who had returned to the country voluntarily, either for visits, or to remain there, were arrested either on arrival in Algeria, or at a later stage. In some cases, the circumstances of the arrest suggest that they were carried out on the basis of information received from foreign security services, or at their request, apparently without warrants issued by the judicial authorities in Algeria. Amnesty International is concerned that information leading to the arrests may have been provided by foreign governments, knowing that the individuals concerned would be at risk of torture or ill-treatment. The case of M'hamed Benyamina is illustrative of such concerns.

M'hamed Benyamina, an Algerian national born in 1971 and resident in France, was arrested in Algeria in September 2005 and detained at an undisclosed location without charge or trial, and without access to the outside world, for five months.

On 9 September 2005, after a month's stay in Algeria, he was arrested at Oran airport, western Algeria, just before boarding a plane back to France. He was arrested by plain clothes officers who did not identify themselves and informed him that French authorities had requested his arrest. He was handcuffed, placed in an unmarked van and transferred to Algiers. He said that, before they reached the place where he was to be held, he was forced to lower his head, allowing him only to see his feet. He stated that he believed the place where he was detained was an army barrack, but during the five months of his detention he did not know where he was and was never informed of this by those who detained him. He said that he did not see any daylight and did not speak to any person apart from his interrogators. He reported that he had been held in a small, dirty cell with no window and no electricity where he was forced to sleep on the concrete floor for the first few weeks, until he was given a mattress. He was reportedly only allowed to use the toilet twice a day.

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.

For five months, M'hamed Benyamina was held arbitrarily and suffered violations of a range of rights guaranteed under Algerian and international law. For example, he was denied access to legal counsel, and to a court to challenge his detention. The treatment he underwent in detention amounts to ill-treatment, and Amnesty International fears that he may also have been subjected to torture. For the entire period of his detention by the DRS, his family was unable to obtain any information about his place of detention, or the reasons for his arrest, despite repeated requests to the French and Algerian authorities. According to his lawyer, the

judicial authorities in Algeria did not confirm that he had been taken into detention until he was charged and transferred to prison.

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, as the judge reportedly failed to inform him of his right to legal counsel and to a medical examination. He reportedly complained 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".

On 4 March 2006, M'hamed Benyamina was released from detention in the context of "national reconciliation" measures and informed that all judicial proceedings against him in Algeria would be stopped. He was apparently planning to return to France, but first sought to clarify whether he would be detained upon his return. However, he was arrested again on 2 April and, after three days of secret detention by the DRS, transferred to Serkadji prison in Algiers. Since 4 March, he has not been brought before a prosecutor or judge, and no judicial decision has been issued to place him in detention. On 9 April, Minister of Justice Tayeb Belaiz was quoted in press reports as saying that the arrest had been carried out to correct an error by the judges who authorized his release. According to the Minister, M'hamed Benyamina should not have benefited from "national reconciliation" measures due to his alleged involvement in planning attacks with explosives. On 17 April, M'hamed Benyamina was transferred to Bouira prison, some 100km to the south east of Algiers, where it is difficult for his lawyer and family to visit him. As of the end of May, the judicial authorities had not clarified on what grounds he had been imprisoned again and whether he was due to stand trial. He had not had access to a court to challenge the legality of his detention.

Based on the information available about the circumstances of M'hamed Benyamina's initial arrest, Amnesty International fears that the French authorities may have been implicated in the arrest and arbitrary detention of M'hamed Benyamina by the Algerian authorities. Given that he was allegedly arrested and questioned in connection with a crime which he was suspected of committing in France, just before boarding a plane back to France, it has been suggested that the French authorities may have requested his arrest in Algeria knowing that he would likely be subjected to human rights violations, including the use of duress to extract information. M'hamed Benyamina himself said that he was told by Algerian security officers that the French authorities had requested his arrest. He also reported that he had been kept under surveillance in France prior to his departure to Algeria. If the authorities in France had reason to question or detain him, they could have done so on his return to France. He was instead arrested at the airport in Algeria and prevented from leaving Algeria.

It has also been alleged that information extracted from M'hamed Benyamina while he was held in secret detention in Algeria, in violation of many of his fundamental human rights, may have resulted in the arrest of several people in France on 26 September 2005 and subsequently. According to reports in the French press, a confidential note – that may have been transmitted by Algerian security forces to the DST – played an important role in these



arrests in France. Seven of those arrested appear to be in preventive detention on charges relating to their allegedly planning to commit violent acts on targets in France.

In February 2006, Amnesty International wrote to French Minister of the Interior Nicolas Sarkozy to seek information about France's alleged role in M'hamed Benyamina's arrest and to express concern about the possible use of information obtained under torture or ill-treatment in judicial investigations. In its response to Amnesty International, a Ministry of Interior official stated that he could not disclose information about this sensitive security matter, and that the arrest of M'hamed Benyamina was entirely the responsibility of the Algerian authorities.

The presidential decrees for "national reconciliation" issued in February 2006 include explicit provisions that Algerians abroad who are wanted for terrorist offences in Algeria may benefit from exemption from prosecution. They also provide that sentences for terrorist offences which have been passed in the absence of the defendant may be annulled and that the individuals concerned will not be prosecuted in Algeria if they approach the relevant authorities and declare to put an end to the activities for which they were sentenced. However, that individuals are no longer wanted by the judicial authorities does not provide a guarantee that these individuals would not be liable to be arrested and detained for interrogation by the DRS, either on their return or at a later stage.

As Amnesty International's research has shown, arrests by the DRS are frequently carried out without the knowledge of the judicial authorities and without informing the public prosecutor, as required by domestic law. In addition, no civilian institution effectively oversees arrests and detentions carried out by the DRS. As a consequence, Amnesty International believes that individuals suspected of links with armed groups inside Algeria, or with alleged terrorist networks abroad, continue to be at risk of arrest and detention by the DRS and are liable to be tortured or otherwise ill-treated, regardless of whether or not they have been exempted from prosecution in the context of "national reconciliation" measures, and of any assurances given by the civilian authorities.

In addition, Amnesty International has received information on several cases where returnees have been arrested again after having been released under the terms of the 2006 amnesty laws, apparently based on information from foreign governments that they had allegedly been involved in terrorist activities abroad. Two of these were M'hamed Benyamina (see above) and Mourad Ikhlef (see page 37 below). The way in which the releases and subsequent renewed arrests were carried out suggests arbitrariness in the application of the 2006 amnesty laws. The laws themselves do not specify how decisions for the release of detainees may be overturned, or how detainees may appeal against such decisions.

The arrests were again carried out by the DRS, in violation of procedures for arrest; the detainees were kept in secret detention for two or three days and later transferred to prison, although no judicial decision seems to have been issued to this effect. After several reports concerning the men's arrest were published in the Algerian press, the men were transferred to different prisons, at a distance of 100km or more from the capital Algiers where they had previously been held, and where their lawyers are based. Amnesty International fears that

they may have been moved away from the capital to make it more difficult for their lawyers and families to visit them regularly and create publicity about their detention. Up to the end of May 2006, their legal situation had not been clarified, and it was not known who had taken the decision to return them to prison.

## 6. The judicial process

The Convention against Torture provides that all allegations of torture or ill-treatment must be promptly and impartially investigated and that any statement which is established to have been made as a result of torture is inadmissible as evidence in legal proceedings. So far, such provisions have not been introduced into Algerian law.

In practice, the judicial authorities routinely fail to investigate allegations that torture or ill-treatment have been committed by the DRS, as well as grave breaches of *garde à vue*. Statements allegedly made under torture or ill-treatment by individuals who have been detained by the DRS on suspicion of involvement in terrorist activities are routinely used to obtain convictions in court.

In addition, Algerian law retains a broad definition of terrorism, which was initially introduced under emergency legislation in 1992<sup>35</sup> and later incorporated into the Penal Code. The definition of terrorist offences is so broad as to allow for the criminalization of the peaceful exercise of certain civil and political rights.

### ***Broad definition of terrorist offences***

According to Article 87 *bis* of the Algerian Penal Code, the definition of terrorism includes 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. Since the introduction of these provisions, Amnesty International has expressed concern that the definition is inconsistent with international law in so far as it allows for the criminalization of rights guaranteed under international human rights law.<sup>36</sup>

The broad definition of terrorism has facilitated the imprisonment of individuals for the peaceful exercise of rights and of lawyers and human rights activists who defended people accused of terrorist activities. Penalties for offences qualified as terrorist activities have been doubled and the scope of the death penalty has been widened to include crimes otherwise punishable by life imprisonment. Activities qualified in broad terms as encouragement of

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<sup>35</sup> Legislative Decree (92-03), published in the Algerian official bulletin (*Journal Officiel*) of 1 October 1992.

<sup>36</sup> See the Amnesty International report *Algeria: Deteriorating human rights under the state of emergency*, AI Index: MDE 28/04/93.

terrorist activities or apology for terrorist acts are punishable by up to 10 years' imprisonment. Membership of a terrorist group abroad, whatever its form, is punishable by up to 20 years' imprisonment, regardless of whether or not the activities were directed against Algerian interests.<sup>37</sup>

### ***Impediments to torture complaints***

Detainees who have been subjected to torture or ill-treatment during secret detention might not state that they have suffered abuse when they are first brought before the judicial authorities. There are numerous reasons why this is the case. Confidence in the administration of justice is low, and detainees are frequently not informed of their rights in accordance with international and domestic law. Most do not have access to legal counsel when they are first brought before the judicial authorities (see below, *Lack of access to legal counsel*).

Some defendants have told Amnesty International that before being brought before the judicial authorities they were threatened by DRS officers that they would be taken back to the barracks if they complained. In some cases, DRS officers apparently attended court hearings, seemingly to intimidate the defendants and to dissuade them from stating that they had been tortured or otherwise ill-treated.

### ***Lack of investigations of torture allegations***

The lack of investigations into claims of torture and other ill-treatment in Algeria is a long-standing concern of Amnesty International. In cases of alleged torture and other ill-treatment which have been raised with the Algerian authorities, Amnesty International has either not received a response or has been told that torture had not occurred and that no investigation had been opened, as no official complaint had been received.

The absence of a formal complaint does not represent 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". As the Special Rapporteur on Torture has specified:

Where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to probe beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment.<sup>38</sup>

In its recently submitted 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

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<sup>37</sup> Articles 87 *bis* 1, 87 *bis* 4 and 87 *bis* 6 of the Penal Code.

<sup>38</sup> UN Document A/57/173, July 2002, para. 23.

law.”<sup>39</sup> However, no information has been provided by the authorities to show that this is the case in practice.

According to Algeria’s Code of Criminal Procedure, when a person is charged at the end of *garde à vue*, they are brought before a public prosecutor and informed of the charges against them before being presented to an examining judge. According to Algerian lawyers, the appearance before the prosecutor is short and formal, giving little, if any, opportunity to the defendant to make statements. A few cases have been brought to Amnesty International’s attention where defendants apparently stated to the prosecutor that they had been tortured or otherwise ill-treated. In all cases, the prosecutor is said to have dismissed these allegations and not to have requested an investigation to be opened. In stark contrast to this, Algeria’s recently submitted report to the Committee against Torture claims that “if a person is suspected of having committed acts of torture which may be qualified as crimes, the public prosecutor instructs the examining judge to open an investigation.”<sup>40</sup> No detail is provided in the report about any such investigations which have taken place.

Article 15 of the UN Guidelines on the Role of Prosecutors provides that:

Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

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. But the judges appear to have routinely dismissed the allegations, without ordering investigations (see, for example, the case of Boubker Sadek below). Where defendants expressly requested to be examined by a forensic doctor when they were presented to the judicial authorities, such requests have apparently been dismissed.

In some cases the examining judge is reported to have declared that he was not competent to order an investigation. In very few cases, the allegations were reflected with a brief and unspecific mention in the court documents. However, in no case did a judge order an examination by a forensic doctor to determine whether physical traces of torture or ill-treatment existed. In the case of Amar Saker (see page 24 above), who had clearly visible traces of torture when he was presented to the examining judge, the judge ordered a referral to a psychologist, not to a forensic doctor, but the examination apparently did not take place.

If there are reasonable grounds to believe that torture or ill-treatment was inflicted during interrogation, judges should ensure that a prompt and impartial investigation is initiated, in accordance with Articles 12, 13, 14 and 16 of the Convention against Torture.

Algerian national Boubker Sadek, born in 1969, was arrested by the DRS on 3 September 2002 in Oran and transferred to Algiers the next day. A painter and decorator by profession, he was allegedly a former member of an armed group active in the western Algerian

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<sup>39</sup> UN Document CAT/C/DZA/3, 10 February 2006, paras. 91-94.

<sup>40</sup> *Ibid.*, para. 111.

provinces of Oran, Tlemçen and Maghnia. He had been arrested in 1995, tried and convicted in connection with alleged assassination attempts on political figures. He was released in 1999 in the context of amnesty measures under the Civil Harmony Law.

According to his own account, Boubker Sadek was tortured while detained at the Ben Aknoun barracks in Algiers. He reported that his body was stretched and that he was tortured with the *chiffon* method and electric shocks. One of his torturers reportedly put his thumbs on Boubker Sadek's eyes and pressed, damaging his eyes. Apparently as a result of the trauma and injuries sustained under torture and ensuing lack of medical care during *garde à vue* detention, Boubker Sadek lost the use of his left eye.

Boubker Sadek reported that he received medical care only after he had been brought before the judicial authorities on 17 September 2002 and a medical examination was carried out upon his transfer to Serkadji prison in Algiers. Four days later he was admitted to the prison hospital where doctors apparently diagnosed detachment of the retina, a condition which may be facilitated by severe trauma and requires prompt surgery. Between September 2002 and January 2003, he underwent two operations, but neither managed to rectify the damage to his eye. He says that his condition deteriorated during his imprisonment and that the sight in his other eye has weakened.

Boubker Sadek says that he asked the doctor who treated him to issue a certificate about his medical condition, but the doctor reportedly refused, saying that he could not do so without permission from his superior.

According to the interrogation report, Boubker Sadek admitted to the DRS that he had been active in 2002 as the head of an armed group in the Oran region which maintained contact with individuals in the United Kingdom, France and Morocco. The report also claims he admitted to having plotted to kill foreign nationals, priests, officials and others, and to having hidden arms, ammunition and communication equipment which the group planned to use. Boubker Sadek later denied these accusations in court and stated that he had not admitted to them, but that they had been added to the interrogation report without his knowledge.

When he was first brought before a judge, in September 2002, he did not have access to legal counsel. Boubker Sadek said that he was not informed by the judge of his right to a lawyer and that he had been threatened by the DRS officers who took him to court that if he did not repeat in front of the judge what he had said under interrogation he would be taken back to the barracks. The minutes of the hearing state that he agreed to making his statement to the judge without the presence of a lawyer. He was charged, among other things, with creating an armed group with the aim of committing killings; and possession of firearms, ammunition and explosives. At the first court hearing, he did not state that he had been tortured. During later hearings with the examining judge, in particular a hearing conducted on 26 April 2003, Boubker Sadek made detailed allegations of torture and complained about the permanent damage to his eye. The judge apparently did not order an investigation into these allegations. Boubker Sadek said that he asked the judge to order a medical examination, but the judge reportedly dismissed the request. The minutes of the court session make an unspecified

mention that Boubker Sadek denied the charges against him and that he had been forced to sign the interrogation report “under duress and under threat”.

On 30 October 2004 Boubker Sadek was sentenced to life imprisonment for creating an armed group and possession of firearms, ammunition and explosives. His lawyers lodged an appeal to the supreme court which remained pending at the end of May 2006. In 2005 he was transferred to a prison in Oran, upon his own request, to facilitate visits by his family who live in western Algeria.

### ***Lack of access to legal counsel***

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 rights 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>41</sup> The vast majority of terrorism-related cases, however, would require further evidence-gathering and therefore do not fall within this category.

According to the information collected by Amnesty International, most defendants accused of terrorist activities are not assisted by a lawyer when they are first brought before a judge, even though this right is enshrined in the Code of Criminal Procedure. Article 100 guarantees the rights of detainees to legal counsel of their own choosing and the right not to make a statement before the judge. The article also sets out the duty of the judge to inform the detainees of these rights. Article 105 of the Code of Criminal Procedure provides that court hearings cannot take place without the detainees’ lawyer, unless they make an express declaration that they do not wish to be represented by a lawyer.

In practice, it is unlikely that a lawyer would be present when a defendant accused of terrorist activities is brought before a judge. 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. This is because on the one hand the suspects may by law be held for up to 12 days before being brought before a judge, while on the other the time limits may in any case not be respected in terrorism-related cases. Consequently, the lawyer generally only finds out afterwards that the first hearing with the examining judge has taken place. In the rare cases where defendants accused of terrorist activities are assisted by a lawyer at the first hearing, it is due to either a coincidence or the perseverance of the lawyer.

Detainees say that they are generally not informed by the judge of their right to be assisted by a lawyer of their own choosing, or that the judge may appoint a legal counsel if they so desire, even though the court reports of the hearing generally contain routine mention of the defendant having been informed of these rights. Some former detainees reported that they

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<sup>41</sup> Article 59 of the Code of Criminal Procedure.

were asked if they agreed to make their statement without a lawyer and that they agreed, either because they did not understand their rights, or because they feared that, if they insisted on having a lawyer present, they might be again transferred to the custody of the DRS. Provisions for legal aid to those who cannot afford a lawyer exist in principle, but they are rarely used in practice.

Mourad Ikhlef, an Algerian born in 1968 and a refugee in Canada, was arrested in Montreal on 12 December 2001 and forcibly returned to Algeria on 28 February 2003. He had been detained in Canada on account of his alleged links with Ahmed Ressay, an Algerian convicted of trying to enter the USA with explosives in December 1999 and planning to carry out a bomb attack. Mourad Ikhlef maintained that he had merely been a neighbour of Ahmed Ressay in Canada and that he had not been involved in planning any acts of violence. The Canadian authorities stated that he posed a risk to national security and deported him to Algeria on 1 March 2003. They said they had received assurances from the Algerian authorities that he would not be subjected to any ill-treatment if returned to Algeria.

In Algeria, Mourad Ikhlef had been sentenced in absentia by an Algiers special court to life imprisonment in September 1993 on the principal charge of “membership of a terrorist group operating in Algeria and abroad”, apparently on the basis of confessions extracted from another detainee under torture. Mourad Ikhlef denied the charges. He said that he had left Algeria for Italy in 1992 and had later gone to Canada. In 1999 he had approached the Algerian embassy in Ottawa in order to have this sentence annulled, in the context of measures of exemption from prosecution under the Civil Harmony Law. The embassy reportedly responded that in order to do so he needed to return to Algeria. As an asylum-seeker in Canada, he was unable to leave the country at the time.

As Mourad Ikhlef had been sentenced in absentia he should have been brought before the judicial authorities upon return to allow for a retrial, in accordance with the provisions of the Code of Criminal Procedure. However, upon arrival at Algiers airport, he was handed over by Canadian security officers to the custody of officers of the DRS, who transferred him directly to army barracks. During the transfer he was reportedly forced to lie on his stomach to prevent him from seeing where he was being taken. He believes that he was held at either the Ben Aknoun or Antar barracks. He was held by the DRS for 10 days, during which time he says he was put under duress and insulted. A lawyer who asked the judicial authorities about his whereabouts was reportedly informed that he was being held by the DRS, but did not receive information about his place of detention or the reason for his arrest. His family, who contacted the police to find out where he was detained, was told that the police were not holding him and did not know where he was.

Lawyers acting on his behalf, who happened to be in court on that day, believed they recognized him when he was taken to court on 10 March 2003 by officers of the DRS. When they asked him if he was Mourad Ikhlef he denied his identity, reportedly after one of the DRS officers stepped on his foot. When he was presented to the examining judge he was accompanied by DRS officers and not assisted by a lawyer, despite the fact that the lawyers had announced their presence to court officials and were waiting outside the court room. They were reportedly refused access to the hearing by the examining judge and a court official,

apparently at the behest of the DRS officers. A request by the defence lawyers to annul the minutes of the hearing due to the absence of legal counsel, in violation of the Code of Criminal Procedure, was not granted. The court maintained the records of the first hearing stating that Mourad Ikhlef had expressly renounced his right to being assisted by a lawyer. Mourad Ikhlef said that he had not been informed of his right to legal counsel and that he had been too scared to insist on the presence of a lawyer.

Mourad Ikhlef faced three separate trials on terrorism-related charges. In the first, a re-trial of the 1993 *in absentia* sentence, he was acquitted in 2003. In a second case, he was sentenced to seven years' imprisonment in November 2005 on charges of "membership of a terrorist group operating abroad aiming to harm the interests of Algeria". He was apparently sentenced exclusively on the basis of the statements he had made while in the custody of the DRS which, according to his testimony, had been made under duress. At the hearing, he denied having any links with armed groups. A further trial in connection with his alleged links with Ahmed Ressay remained pending.

Mourad Ikhlef was released on 26 March 2006 and informed that all judicial proceedings against him would be ended in the context of "national reconciliation" measures. He was arrested again a week later by DRS officers and held at military barracks for three days. On 5 April, he was transferred to Serkadji prison without having been brought before a prosecutor or judge, and without any judicial decision placing him in detention. On 16 April, Mourad Ikhlef was transferred to Chlef prison, some 250km south-west of Algiers where his family lives. Minister of Justice Tayeb Belaiz was quoted in press reports on 9 April as saying that Mourad Ikhlef should not have benefited from "national reconciliation" measures due to his alleged involvement in planning attacks with explosives. By the end of May 2006, the grounds for his renewed imprisonment and the status of his detention had not been clarified.

The right of a defendant to legal counsel is one of the key safeguards for a fair trial, enshrined in Article 14 of the ICCPR, and applies to all stages of the judicial process. The Human Rights Committee and other authoritative human rights bodies have further recognized that the right to a fair trial requires access to a lawyer during detention, interrogation and preliminary investigations. The fact that Algerian law does not grant detainees access to legal counsel during *garde à vue* therefore not only exposes them to a greater risk of torture and other ill-treatment, but undermines their right to a fair trial from the start.

The right of detainees to be assisted by a lawyer when charged is also enshrined in Principles 5 and 6 of the Basic Principles on the Role of Lawyers. Principle 6 notes specifically that individuals charged with serious crimes should have access to a lawyer "of experience and competence commensurate with the nature of the offence" which should be provided free of charge if the defendant does not have the means to pay for such services. Given the gravity of the charges in cases of alleged terrorist activity, Amnesty International is seriously concerned that the majority of defendants accused of terrorist activity do not appear to have access to legal counsel when they are first brought before a judge, which undermines their right to a fair trial.



### **Statements used as evidence**

Interrogation reports established by the DRS appear to be routinely used as evidence in court. In most cases brought to Amnesty International's attention, no other evidence was brought before the court to obtain convictions. This constitutes a breach of Article 215 of the Code of Criminal Procedure which states that interrogation reports of the judicial police do not constitute evidence and may only be used for information during judicial proceedings.

According to Algerian lawyers, even though complaints of torture or ill-treatment are generally not investigated, they sometimes result in a mitigated sentence, or an acquittal, if they are made at the first hearing and if the accusations are denied in full. However, in the absence of a lawyer and if defendants were intimidated prior to their appearance before the judicial authorities, they may not retract 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 had been subjected to torture or ill-treatment, or that they had signed interrogation reports under duress, these claims are likely to be dismissed by the judges on account of the defendant not having made the statements at the first hearing.

Not only is this practice in breach of the obligation to conduct a prompt and impartial investigation into allegations of torture and other ill-treatment (discussed above), the use of any statements, such as the interrogation reports, obtained through torture or ill-treatment as evidence in any proceedings, violates international law. Article 15 of the Convention against Torture prohibits the use of statements obtained through torture as evidence in any proceedings. It states:

Each state party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

This prohibition is not currently reflected in Algerian law, although it is one of the essential means of preventing torture. One of the commonest aims of torture is to force confessions or other statements in order to secure convictions. By prohibiting the use of such statements in criminal proceedings, the incentive for using torture greatly diminishes. The prohibition in Article 15 is not limited to self-incriminating statements. Because the prohibition of the use of such statements is absolute, it is inseparable from the duty of courts to investigate all allegations of torture and other ill-treatment promptly and impartially. While Article 15 of the Convention against Torture only refers to statements obtained through torture, Article 12 of the Declaration against Torture also prohibits the use of statements made as a result of ill-treatment other than torture.

The Human Rights Committee has also stated that the use or admissibility in judicial proceedings of statements or confessions obtained through torture or "other prohibited treatment" should be proscribed by law.<sup>42</sup>

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<sup>42</sup> Human Rights Committee, General Comment No. 20, para 12. UN Document A/47/40.

### ***Impact of the recent amnesty laws***

Among those released from detention as of March 2006 under the provisions of the laws granting exemption from prosecution were detainees held on terrorism-related charges who had been subjected to torture or ill-treatment by the DRS. As the allegations of torture have not been investigated in any case known to Amnesty International, the Algerian state remains bound by its duty to investigate the violations and to ensure that victims of torture and other ill-treatment are granted an effective remedy, in accordance with Article 14 of the Convention against Torture and Article 2 of the ICCPR. This is regardless of whether or not the individuals have been released, and regardless of whether or not the perpetrators of torture or ill-treatment are protected by national laws.

The comprehensive amnesty for security forces as provided in the laws of February 2006 covers violations committed during the arrest and detention of suspects, such as torture or arbitrary detention, which carry severe penalties under Algerian law. As a consequence, those who have been subjected to torture, ill-treatment and arbitrary detention prior to the passing of the laws will not be able to seek justice through Algerian courts.

Furthermore the decrees of February 2006 run counter to recent legislative amendments aimed at bringing Algerian law into closer conformity with international law. For example, amendments to the Code of Criminal Procedure introduced in 2004 provide that there is no statute of limitation for acts qualified as “terrorist crimes”, which conflicts with exempting from prosecution large numbers of individuals under investigation for such crimes. No similar provision has been introduced for the crime of torture despite the fact that it is regarded as part of customary international law that statutes of limitations do not apply to acts of torture. Even though amendments to the Penal Code in 2004 introduced provisions on torture (see above, *Lack of oversight and accountability*), the 2006 amnesty laws will undoubtedly hamper the application of these provisions in practice.

Amnesty International is concerned that the impunity provisions for security forces may even extend to acts of torture or ill-treatment committed after the adoption of the 2006 amnesty laws and prevent courts from investigating any complaints in future (see above, *The 2006 amnesty laws*). Anyone exposing torture or ill-treatment by the security forces may further be prosecuted under Article 46 of the amnesty decree, which penalizes criticism of the security forces. These provisions, if implemented, would undermine the right to freedom of expression and the rule of law in that they negate the criminalization of torture and other ill-treatment in Algerian law and deny victims the right to an effective remedy and reparation, as enshrined in Articles 13 and 14 of the Convention against Torture and Article 2(3) of the ICCPR.

These measures are of particular concern at a time when freedom of expression inside Algeria has been markedly restricted. There has been a steep increase in the number of court cases brought against journalists and newspaper editors over the past two years, in an apparent attempt to silence the privately owned press. Many of these are defamation cases filed against individual journalists, who face prison sentences for reporting allegations of corruption or for publicly criticizing officials. Relatives of the “disappeared” and human rights defenders have

also faced court action for having protested against the amnesty laws, or for having publicly accused people of having taken away their relatives.

Human rights defenders in Algeria have already been exposed to intimidation based on Article 46 of the amnesty decree. In May 2006, lawyer and human rights defender Amine Sidhoum was reportedly warned by an Algerian official that he risked a prison term of up to five years, to discourage him from raising concerns about the human rights situation in Algeria at the 39<sup>th</sup> Session of the African Commission on Human and People's Rights held in Banjul, Gambia.

At the same time, scrutiny of the human rights situation from outside the country continues to be restricted by the authorities. Algeria has failed to cooperate effectively with UN human rights mechanisms, notably by denying UN human rights experts access to the country. The Special Rapporteur on Torture, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, and the Working Group on Enforced or Involuntary Disappearances have all been unable to conduct investigations in Algeria since they first requested access to Algeria in 1997, 1998 and 2000 respectively. Visits by the Special Rapporteur on Violence against Women, its Causes and Consequences and the Special Rapporteur on Freedom of Expression which the government had scheduled for 2006 were cancelled and postponed indefinitely in late 2005. The government continues to restrict access to Algeria for members of international human rights organizations and foreign journalists who require visas. Amnesty International and other human rights organizations are frequently refused access on the grounds, for example, that the timing is considered to be inconvenient. In December 2005, Lawyers Without Borders were reportedly not granted an entry visa to set up a free legal advice centre for victims of human rights abuses.

## **7. Conclusion**

The patterns of human rights violations described in this report demonstrate that officers of the DRS continue to hold individuals suspected of involvement in terrorist activities in secret detention and to torture or otherwise ill-treat suspects during interrogation. These violations are committed with systematic impunity, compounded by the 2006 amnesty laws. As violence continues at lower levels inside Algeria, arrests in the context of counter-terrorism continue to occur.

Amnesty International recognizes that states have a right and a duty to protect the lives and security of persons under their jurisdiction and to take necessary and proportionate steps to prevent acts of terrorism. However, they must do so in full accordance with international law. Amnesty International believes that neither justice nor security are served effectively if detainees are deprived of their basic rights and if the government and its allies in the "war on terror" turn a blind eye to torture or ill-treatment. If Algeria is to end the cycle of violence and counter-violence the government must ensure that its own agents fulfil human rights obligations in combating terrorism. Strengthening accountability for human rights violations

and ending the use of torture and other ill-treatment should be among the government's foremost priorities.

The persistent denial of the Algerian authorities of the widespread abuse which has taken place is an indication that Algeria has some way to go in combating torture and other ill-treatment. Amnesty International hopes that, by exposing an area of systematic abuse, and by issuing concrete recommendations, this report will contribute to ending torture and other ill-treatment in the long term. As a first step towards addressing the problem, the Algerian government should acknowledge the disturbing allegations of abuse documented in this report and publicly commit to investigating them. In light of the pattern of abuse established in this report, Amnesty International is also calling on the government to ensure that DRS officers no longer arrest or detain suspects.

## **8. Recommendations**

Amnesty International calls on the Algerian government to implement the following recommendations.

### ***Condemn torture and ill-treatment***

- Officially and publicly condemn torture and other ill-treatment; ensure that these practices cease; and make clear that they are prohibited absolutely and will not be tolerated under any circumstances;
- Send a clear message to all officers carrying out arrests and detentions, and in particular those of the DRS, that torture and other ill-treatment will never be tolerated.

### ***Enforce safeguards***

- End incommunicado detention of all detainees and ensure that the right of detainees enshrined in Algerian law to communicate immediately with the outside world, including with their families, and to receive visits, is enforced;
- Ensure that all officers investigating terrorism-related offences are appropriately trained and comply fully with safeguards under Algerian and international law which protect detainees from arbitrary arrest, in particular the obligation to notify detainees of their rights during detention, and to inform prosecutors of arrests and of the reasons for the arrests without delay;
- Enforce the provision in the last paragraph of Article 51 of the Code of Criminal Procedure which provides for criminal penalties where the judicial police violate procedures and time limits of *garde à vue*;
- Ensure that all allegations of torture and other ill-treatment, and the circumstances allowing such abuses to be perpetrated, are investigated promptly and impartially, even where no formal complaint has been made.

### **End arrests and detentions by the DRS**

- Take immediate steps to ensure that officers of the DRS, who routinely violate safeguards, no longer carry out arrests and detentions and that they will no longer be able to exercise judicial police functions.

### **Strengthen protection**

- Enact legislation to ensure that all officers carrying out arrests identify themselves to those arrested and that they notify them of the reasons for the arrest;

- Introduce new safeguards to allow detainees to be examined by an independent doctor as soon as they are arrested, and after each period of questioning and monitor the quality of medical reporting;

- Reform legislation to ensure that all detainees are given access to legal counsel within 24 hours of detention and that they have access to legal counsel at all stages of the judicial process, including during detention, interrogation and preliminary investigations;

- Ensure that the authorities responsible for detention are separate from those in charge of interrogation;

- Establish a system of regular, unannounced visits by independent national bodies to all places of detention, including those used for *garde à vue*, in order to monitor the treatment of detainees and their conditions of detention;

- Establish and ensure implementation of effective system-wide measures incorporating all the elements of Amnesty International's 12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State.<sup>43</sup>

### **End secret detention**

- End secret detention in military barracks, where detainees are at risk of torture or ill-treatment and where detention conditions may in themselves constitute a form of cruel, inhuman and degrading treatment or punishment;

- Ensure that all places where detainees are held are officially recognized and open to inspection by prosecutors and appropriate independent bodies;

- In the interests of transparency, publish up-to-date lists of all places of detention in a form that is readily accessible to lawyers and members of the public;

- Establish and maintain a central register to ensure all detainees can be traced.

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