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OPERATIONAL GUIDANCE NOTE

ALGERIA

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1. Introduction

- 1.1** This document summarises the general, political and human rights situation in Algeria and provides information on the nature and handling of claims frequently received from nationals/residents of that province. It must be read in conjunction with the RDS - COI Service Algeria Country of Origin Information Report of October 2005 and any RDS-COI Service bulletins on Algeria at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.2** This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
 API on Humanitarian Protection
 API on Discretionary Leave
 API on the European Convention on Human Rights

- 1.3** Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.

Source documents

- 1.4** A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

- 2.1** In the 1960s and 1970s, under President Houari Boumedienne, Algeria embarked on a programme of industrial expansion. Economic recession and social unrest in the 1980s forced President Chadli to introduce political and economic liberalisation at the end of the decade. Political parties such as the FIS (Front Islamique du Salut), a broad coalition of Islamist groups, sprang up. In December 1991 the FIS dominated the first of two rounds of legislative elections. Fearing an Islamist take-over, the authorities intervened in January 1992, cancelling the elections. The FIS was then banned, triggering a vicious armed civil insurgency, which although significantly reduced in intensity, continues to affect some areas of Algeria. At least 100,000 people are thought to have died in the conflict, many in horrific massacres committed by the most extreme of the various armed Islamic groups.¹
- 2.2** One Islamist group, the Armee Islamique du Salut (AIS), declared a ceasefire in October 1997 and later came out in support of the "national reconciliation" policy of President Bouteflika (elected April 1999). The AIS subsequently disbanded in January 2000. Many political prisoners were pardoned, and several thousand members of armed groups were granted exemption from prosecution, under a limited amnesty which was in force up to 13 January 2000. Following extensive security force operations the Groupe Islamique Armée (GIA) poses a reduced threat within Algeria. The Groupe Salafiste pour la Predication et le Combat (GSPC) is thought still to have around 500 armed insurgents. The conflict is estimated to have claimed over 400 lives during 2004.²
- 2.3** Since April 2001, there has also been serious unrest in the Kabylie region east of Algiers. During the initial protests in April 2001 (following the death in custody of a Kabylie youth) at least 50 people died after being shot by members of the security forces. The Algerian government set up a National Commission of Inquiry, whose preliminary conclusions were published in July and confirmed in December 2001. The Commission concluded that the gendarmerie and other security forces had repeatedly resorted to excessive use of lethal force.³
- 2.4** The President is elected by a popular vote for a five-year term. The last presidential election was held on 8 April 2004. Abdelaziz Bouteflika was re-elected for a second term with 85% of the vote. Turnout was around 58%.⁴
- 2.5** Algeria continues to be perceived by many observers to be making sustained efforts towards establishing peace and security on its territory. However, the national reconciliation process remains fragile and there are continuing reports of human rights abuses in the country. The Law on Civil Harmony (adopted in July 1999 and overwhelmingly endorsed in a national referendum in September 1999) did not bring an end to the political violence, and indiscriminate attacks on civilians by armed groups, as well as clashes between the latter and the government forces, continue to take place.⁵
- 2.6** In September 2005, the Algerian public approved a 'Charter for Peace and Reconciliation' by referendum. The Charter for Peace and Reconciliation provides for an amnesty for individuals involved in earlier terrorist acts but excludes those involved in massacres, rapes or who carried out bombings in public places.⁶
- 2.7** Terrorist groups committed numerous, serious abuses. Terrorists continued their campaign of insurgency, targeting government officials, families of security force members, and civilians. The death of civilians often was the result of rivalries between terrorist groups or to facilitate the theft of goods needed to support their operations. Terrorists used violence

¹ FCO Country Profile, Oct 2005, p2

² FCO Country Profile, Oct 2005, p2

³ FCO Country Profile, Oct 2005, p2-3

⁴ FCO Country Profile, Oct 2005, p3

⁵ UNHCR position paper, December 2004

⁶ BBC, Q&A: Algerian referendum, 29 September 2005 & Timeline Algeria, 29 September 2005

to extort money, food, and medical supplies. Terrorists also used vehicle-borne explosive devices to attack infrastructure targets and also used ambushes to attack military convoys. The violence occurred primarily in the countryside, as the security forces largely forced terrorists out of the cities. Successful operations by security forces helped to eliminate terrorist cells and leaders, weakened terrorist groups, and resulted in significantly lower casualty levels in 2004.⁷

- 2.8** Alongside the violence committed by the Islamic armed groups over the last decade are numerous documented allegations of human rights abuses by the security forces and state-armed militias, including the enforced disappearances of at least 4,000 people, abductions, torture and extra-judicial killings.⁸ Citing the country's ongoing struggle against armed terrorist groups, civilian and military police arbitrarily detained and arrested persons and incommunicado detention continued.⁹ However in October 2004, the Government passed new Penal Code legislation criminalising both torture and sexual harassment for the first time.¹⁰
- 2.9** The police and the communal guards operated checkpoints throughout the country. They routinely stopped vehicles to inspect identification papers and to search for evidence of terrorist activity. They sometimes detained persons at these checkpoints. Armed bandits and terrorists intercepted citizens at roadblocks, often using stolen police uniforms and equipment to rob them of their cash and vehicles. On occasion, armed groups killed groups of civilian passengers at these roadblocks.¹¹

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Algeria. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal flight are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)

⁷ USSD 2004, p2

⁸ FCO Country Profile, Oct 2005, p4

⁹ USSD 2004, p1

¹⁰ USSD 2004, p2

¹¹ COIS Algeria Country Report para 6.126

- 3.5** Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

3.6 Fear of Armed Groups

- 3.6.1** Many claimants will claim asylum based on ill treatment amounting to persecution at the hands of the GIA, GSPC, or other armed groups.
- 3.6.2 *Treatment.*** The Armed Islamic Group (GIA) (Groupe Islamique Armé) is held by the Algerian Government to have been eliminated in January 2005.¹² Starting in 1992 the GIA has engaged in attacks against civilians and government workers. Their brutal attacks on civilians have alienated them from the Algerian populace.¹³ The Groupe salafiste pour la prédication et le combat, Salafist Group for Call and Combat (GSPC) is a GIA splinter group. The GSPC has around 300 armed fighters to its name.¹⁴ In contrast to the GIA, the GSPC pledged to avoid civilian attacks inside Algeria.¹⁵
- 3.6.3** Terrorist groups mainly targeted infrastructure and security forces. These groups also committed acts of extortion by carrying out violent reprisals against those who failed to pay a 'tax.' Other tactics included creating false roadblocks outside the cities, often by using stolen police uniforms, weapons, and equipment. Some killings, including massacres, also were attributed to revenge, banditry, and disputes over private land ownership.¹⁶
- 3.6.4** According to Amnesty International in September 2003, the perpetrators generally escaped without being apprehended, even when killings were reported close to security force bases. While victims and relatives of victims were sometimes able to identify perpetrators of killings or provide important testimonies to locate those responsible, little attempt appears to have been made to investigate killings and apprehend those responsible, so that most questions remain unanswered.¹⁷ The USSD report published on 28 February 2005, noted that the violence appears to have occurred primarily in the countryside, as the security forces largely forced the terrorists out of the cities.¹⁸ Amnesty International in a report dated December 2004 stated that women in rural areas have been at risk of abduction and rape by armed groups.¹⁹
- 3.6.5** The US International Religious Freedom Report 2004 noted that radical Islamic extremists have issued public threats against all "infidels" in the country, both foreigners and citizens, and have killed both Muslims and non-Muslims, including missionaries. Extremists continued attacks against both the Government and moderate Muslim and secular civilians; however, the level of violence perpetrated by these terrorists continued to decline.²⁰
- 3.6.6 Sufficiency of Protection** Successful operations by security forces helped to eliminate terrorist cells and leaders, weakened terrorist groups, and resulted in significantly lower

¹² COIS Algeria Country Report para 6.37-6.40

¹³ COIS Algeria Country Report para 6.39

¹⁴ COIS Algeria Country Report para 6.41

¹⁵ COIS Algeria Country Report para 6.42

¹⁶ COIS Algeria Country Report para 6.31

¹⁷ COIS Algeria Country Report para 6.32

¹⁸ COIS Algeria Country Report para 6.33

¹⁹ AI, December 2004, p13

²⁰ COIS Algeria Country Report para 6.35

casualty levels for 2004.²¹ The Algerian authorities have shown that they are making considerable efforts towards maintaining security and protecting against terrorists. Security is improving in previous conflict zones and the Algerian authorities have a tight hold on the main cities.²² Whilst a guarantee of protection is not provided and this would be far too high a burden on the State, in the cities the authorities are able to provide sufficient protection from armed groups.

3.6.7 Internal relocation. Despite numerous checkpoints, an individual who has a fear of the armed groups could relocate to the cities where most of the groups have been forced out by the authorities.²³

3.6.8 Caselaw.

ML [2004] UKIAT 00332

The Tribunal found that the GIA is not capable of posing any sort of realistic threat now. (para 13) Moreover they found that there is no risk of persecution or Article 3 treatment from the GIA in Algiers and the appellant could internally relocate there.

FT [2004] UKIAT 00212

The Tribunal found that the GIA no longer targets conscripts and even if they did, they do not have a presence in larger cities such as Algiers. (para 16)

AD [2004] UKIAT 00137

The Tribunal found that there was no objective information that the GIA currently target ex policemen. The objective information shows that GIA membership is now relatively small and this would impact on their ability to carry out targeted attacks. It also shows that they have lost the confidence and support of the local population and that they draw no distinction between their opponents and neutral bystanders when planning attacks. (para 23) The IAT conclude that his fear does not constitute a real risk providing he stays within one of the big cities of Algeria. Moreover in general terms there is a sufficiency of protection against terrorists available from the Algerian authorities.

3.6.9 Conclusion. Groups such as the GIA and the GSPC have recently or in the past been responsible for actions against civilians in Algeria which may have resulted in a claimant having a genuine fear of persecution. However taking into account the current strengths and activities of these groups, that there is sufficient protection in the cities and that individuals can relocate to escape a localised threat, claims based on threats from active terrorist groups such as the GIA or GSPC will not generally result in a grant of asylum or Humanitarian Protection.

3.7 Armed Group Membership

3.7.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of state due to their membership or perceived membership of an armed group.

3.7.2 Treatment The Islamic Salvation Army (AIS) (Armée Islamique du Salut) no longer exists. The Armed Islamic Group (GIA) (Groupe Islamique Armé) is held by the Algerian Government to have been eliminated in January 2005.²⁴ The GIA and GSPC and the Katibat El Ahoual are alleged to have links with Al Qaida, and both the GIA and the GSPC are proscribed under UK law. About 2800 Algerians are estimated to have passed through Al Qaida camps in Afghanistan making Algerians the third largest contributor of manpower to the group after Saudi Arabia and Yemen.²⁵

3.7.3 Amnesty International in their September 2003 report noted that since 13 January 2000, hundreds of armed group members are reported to have surrendered to the authorities. Consistent reports during the last three and a half years have indicated that individuals or

²¹ COIS Algeria Country Report para 6.34

²² COIS Algeria Country Report para 6.33

²³ COIS Algeria Country Report para 6.33

²⁴ COIS Algeria Country Report para 6.37 – 6.38

²⁵ COIS Algeria Country Report para 6.47

groups of individuals who gave themselves up after 13 January 2000 have been allowed to return home immediately or shortly after their surrender. Amnesty International received information that some of those who gave themselves up have been given back their weapons after leaving armed groups in order to defend themselves against former comrades.²⁶ The Canadian Immigration Board noted in July 2005 that in one specific report it was indicated that the fate of the individuals who turned themselves in varied: some were victims of acts of revenge by the victims' families, some "former terrorists" lived their lives normally without "any apparent contrition" for past crimes; some were threatened and intimidated by people; and some were killed by former colleagues who called them traitors.²⁷

- 3.7.4** In September 2005 Algerians took part in a referendum on a government plan to grant a partial amnesty to Islamist rebels and government forces involved in the country's civil war. The Charter for Peace and National Reconciliation hoped to turn the page on over a decade of conflict in Algeria, which has claimed 150,000 lives and cost the country more than \$30bn. The Charter ends judicial proceedings for all those who laid down their weapons in 1999, following the president's clemency law, and those who vow to lay down their weapons now. Algerians backed the reconciliation referendum.²⁸
- 3.7.5** According to press reports, some 500 people were killed during 2004. The majority were members of the security forces and armed groups. Some of the deaths reportedly occurred during armed confrontations. In other cases suspected armed group members were reportedly killed in operations by the security forces. There were concerns that some of these were extrajudicial executions.²⁹
- 3.7.6** There is a time limit of 12 days during which suspects in crimes categorised as 'acts of terrorism or subversion' can be held in garde à vue (pretrial detention).³⁰ In all other cases it is no longer than 48 hours before the prosecutor must determine if enough evidence exists to continue to hold or release them.³¹
- 3.7.7** Though human rights lawyers have stated that the incidence and severity of torture is on the decline – in part due to better training of the security forces and alternative intelligence gathering techniques – they maintained that torture still occurred in military prisons, more frequently against those arrested on 'security grounds'.³²
- 3.7.8** On 19 July 2005 it was reported that the Criminal Court at the courts in Boumerdes had handed down eighteen death sentences against members of the GSPC who were active in the Boumerdes province and who had formed groups in Baghlia, Dellys, si Moustafa and Corso.³³ However former President Liamine Zeroual declared a moratorium on executions in December 1993 and no executions have been carried out since. The last executions took place in August 1993, when seven armed Islamists were executed.³⁴
- 3.7.9** **Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.7.10** **Internal relocation.** As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.

²⁶ COIS Algeria Country Report para 6.54

²⁷ Canadian IRB, 12 July 2005

²⁸ BBC, Q&A: Algerian referendum, 29 September 2005 & Timeline Algeria, 29 September 2005

²⁹ COIS Algeria Country Report para 6.30

³⁰ COIS Algeria Country Report para 5.34

³¹ COIS Algeria Country Report para 5.32

³² COIS Algeria Country Report para 6.11

³³ COIS Algeria Country Report para 5.38

³⁴ COIS Algeria Country Report para 5.40

3.7.11 **Caselaw.**

FM CG [2003] UKIAT 00178

The Tribunal found that there is a clear distinction to be made between organisations such as GIA who have rejected the amnesty and FIS/AIS who now want peace. There is no objective evidence to suggest that there have been significant material breaches of the amnesty for FIS/AIS members. (para 20) The Tribunal also stated that many former members of the FIS/AIS have been reintegrated into society and that there is a package of support available for them on return. (para 27)

3.7.12 Conclusion Individuals who have been members of the FIS or AIS are unlikely to be able to demonstrate a real risk of prosecution on return to Algeria. Most individuals would be eligible for the amnesty and would receive assistance on return. A grant of asylum or Humanitarian Protection will not be appropriate in such cases. An individual who was a member of GIA or GSPC is likely to have a well founded fear of persecution however caseworkers should note that these groups have been responsible for numerous serious human rights abuses, some of which amount to war crimes. In addition, both these organisations are proscribed in the UK under terrorist legislation. If it is accepted that the claimant was a member of the GIA or GSPC then caseworkers should consider whether to apply one of the Exclusion Clauses. Caseworkers should refer such cases to a Senior Caseworker in the first instance.

3.8 **Berbers**

3.8.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of the State by virtue of their ethnicity.

3.8.2 Treatment Berbers call themselves Imazighen (or Amazigh) meaning noble or free born. The Berber-speaking population of Algeria comprises a little over one quarter of the population of 26 million and is concentrated in the mainly mountainous areas of Kabylia, Chaouia, the Mزاب and the Sahara.³⁵

3.8.3 The Berber minority of about 9 million centred in the Kabylie region participated freely and actively in the political process.³⁶ The Berbers are not generally discriminated against in public life on the basis of their identity.³⁷ The National Charter of 1996 recognised the Berber culture and language as one of the components of Algerian identity.³⁸

3.8.4 In Kabylia, east of Algiers, there have been demonstrations and strikes against the authorities since April 2001.³⁹ The principal complaint of the rioters of 2001 was the contempt they received at the hands of authority who have abused their power with impunity.⁴⁰ The heads of the gendarmerie and civil police, as well as the Ministry of the Interior, have admitted the existence of abuse in the Kabylie but denied that it was systematic and widespread.⁴¹

3.8.5 Sufficiency of protection. As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.

3.8.6 Internal relocation. As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.

3.8.7 **Caselaw.**

RB [2004] UKIAT 00220

³⁵ COIS Algeria Country Report para 6.131

³⁶ COIS Algeria Country Report para 6.132

³⁷ COIS Algeria Country Report para 6.137

³⁸ COIS Algeria Country Report para 6.133

³⁹ COIS Algeria Country Report para 6.138

⁴⁰ COIS Algeria Country Report para 6.139

⁴¹ COIS Algeria Country Report para 6.142

The Tribunal stated that the country information did not show that if the appellant was returned to his home area or any other part of Algeria he would be at risk of persecution or infringement of his human rights because of his Berber ethnicity. They added that the country information did not show that Berbers are at risk in Algeria absent any individual or particular reason for having excited the adverse interest of the authorities. (para 21)

3.8.8 Conclusion. Berbers may suffer discrimination as a direct result of their ethnicity however the level of discrimination against them would not generally reach the level of persistent and serious ill treatment. It is unlikely that a Berber would be able to demonstrate that return to Algeria would put him/her at a real risk of persecution or torture or inhuman or degrading treatment by virtue of his ethnicity alone, and therefore a grant of asylum or Humanitarian Protection will not be appropriate in these cases.

3.9 Military Service Evasion

3.9.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of state due to their evasion of military service.

3.9.2 Treatment Military service is compulsory for all men and lasts 18 months. The minimum age for compulsory recruitment is 19. After completing service soldiers must remain available to the Ministry of Defence for five years and may be recalled at any time. Thereafter, they form part of the reserve forces for a further 20 years.⁴² There is no legal provision for conscientious objection (CO) and no substitute service. Any individual claiming to be a CO will be considered a draft evader (*insoumis*).⁴³

3.9.3 Amnesty International stated in June 2003 that at the end of 1999, the Ministry of Defence announced that those over 27 years of age who had not performed military service, including those who had deferred or evaded the draft, would have their situation 'regularized'. The Ministry has subsequently extended the age range of those affected by this process to include all those born before or during 1980. At the time announced by the authorities for a given age group, those falling within it who have submitted applications reportedly have their cases examined on a case-by-case basis. After this a decision is made on whether they will receive a document declaring that they are exempt from military service. However, the authorities' criteria for deciding who should obtain exemption from military service under this scheme has not been made public and the names of those so exempted have not been published.⁴⁴

3.9.4 The penalties for evasion are prescribed in the 1971 Military Penal Code. Algeria is still in a declared state of emergency so punishments are applicable to wartime. For draft evasion and refusal to perform military service (*insoumission*) punishment is from 2-10 years imprisonment. Officers may be dismissed. *Insoumis* are those called up who have not reported to the military within 30 days of a call-up notice.⁴⁵

3.9.5 Information on the actual penalties imposed is different. Canadian Immigration in June 2005 relied on a Report of 2001 and found the information still applicable. The 2001 report stated that if an Algerian is convicted of draft evasion, sentences could entail incarceration for a maximum of 36 months, 18 months of military service, or both. The courts tend to impose "more lenient sentences, especially for those who merely sought to avoid doing their service, and the latter are, therefore, often only sentenced to do their normal service term."⁴⁶ Canadian Immigration also noted in May 2005 that a large proportion of youths avoid military service without even obtaining an exemption or stay (yellow card). According to the Algeria-Watch article quoted, they wait, sometimes until their thirties, for a possible

⁴² COIS Algeria Country Report para 5.54

⁴³ War Resisters' International, 30 June 1998, p1

⁴⁴ COIS Algeria Country Report para 5.54

⁴⁵ War Resisters' International, 30 June 1998, p2

⁴⁶ Canadian IRB, 7 June 2005

amnesty. The article also stated that these youths are eventually forced to join the army after ignoring many notices to report for duty.⁴⁷

3.9.6 Sufficiency of Protection As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.

3.9.7 Internal relocation. As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.

3.9.8 Caselaw

FOUGHALI (00/TH/01513)

The Tribunal concluded that the appellant would not be at risk of persecution on return to Algeria based on his draft evasion (para 53). The Tribunal stated that there are four exceptions, which establish that military service would give rise to a well-founded fear of persecution (listed in para 9). However, the Tribunal go on to state that no appellant will be able to qualify under any of the exceptions unless he can satisfy the decision-maker that he has genuinely and sincerely held beliefs opposed to participation in military service (para 53).

SLIMANI (01/TH/00092)

The Tribunal adopted the findings of Foughali because this appellant was not able to show that he had strong feelings against participation in the conflict because such participation was likely to involve actions repugnant to basic international humanitarian law norms (para 14). The Tribunal stated that the principles laid out in Foughali and Sepet should be followed when considering issues surrounding military service in Algeria.

BOUZENOUNE (2002) UKIAT 00516

The Tribunal stated that there is no evidence that conscripts, particularly reluctant conscripts, have been forced to commit atrocities in Algeria (para 10). Furthermore, the Tribunal stated that there is no evidence that draft evaders are ill-treated in breach of Article 3 in Algerian prisons and no inferences should be drawn from the lack of public Red Cross reports on their prison visits (para 21).

Sepet & Another [2003] UKHL 15

The ground upon which the appellants claimed asylum was related to their liability, if returned to Turkey, to perform compulsory military service on pain of imprisonment if they refused. The House of Lords in a unanimous judgement dismissed the appellants' appeals. The House of Lords found that there is no internationally recognised right to object to military service on grounds of conscience, so that a proper punishment for evading military service on such grounds is not persecution for a Convention reason.

3.9.9 Conclusion It is unlikely that any claimant will be able to demonstrate a fear of persecution as a direct and sole result of their military evasion. Despite the Penal Code penalties for evading military service being 2-10 years imprisonment, it seems that the majority of cases receive punishment on the lower end of the scale, and in some cases individuals are only sentenced to complete their military service. This notwithstanding, punishment for evading military service does not amount to persecution for a Convention reason and taking into account the punishments outlined in the Penal Code a grant of asylum or Humanitarian Protection will not be appropriate in most cases. Caseworkers should refer to section 3.13 when considering prison conditions.

3.10 Army Deserters

3.10.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of the State due to their desertion from the army.

3.10.2 Treatment Military service is compulsory for all men and lasts 18 months. The minimum age for compulsory recruitment is 19. After completing service soldiers must remain available to the Ministry of Defence for five years and may be recalled at any time.

⁴⁷ Canadian IRB, 18 May 2005

Thereafter, they form part of the reserve forces for a further 20 years.⁴⁸ Human rights organisations, including Amnesty International, have said that deserters from the Algerian military sometimes face 'torture and execution upon return.' The Algerian Embassy has in the past insisted that its military has not executed a deserter since 1962.⁴⁹

3.10.3 The penalties for desertion are prescribed in articles 255 to 270 of the 1971 Military Penal Code, depending on whether the deserter fled within the country, went abroad, or deserted to the enemy, and whether the deserter was alone or in a group. Algeria is still in a declared state of emergency so the punishments are those applicable to wartime. For desertion abroad this is 10-20 years imprisonment (art.258 264). If deserters flee to an armed group or to the enemy the maximum punishment is execution (arts. 266 to 269).⁵⁰ However former President Liamine Zeroual declared a moratorium on executions in December 1993 and no executions have been carried out since.⁵¹ Canadian Immigration in June 2005 relied on a Report of 2001 and found the information still applicable. It was noted that if deserters under 55 years of age are caught, they can be taken before a military tribunal for trial. The penalty can be 6 months' to 5 years' incarceration for junior military personnel and up to 10 years for an officer, after which he may still be required to finish his military service.⁵²

3.10.4 Sufficiency of Protection As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.

3.10.5 Internal relocation. As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.

3.10.6 Caselaw

SG [2005] UKIAT 00031

The Tribunal considered that the sentence of ten years of actual imprisonment for desertion in accordance with Article 256 of the military code was not disproportionate. They considered that prison conditions have improved over the years and that the objective material does not show that prison conditions in military prisons are harsh to the extreme that they cross the high threshold to amount to a breach of the claimant's Article 3 rights. (para 29 and para 31)

Sepet & Another [2003] UKHL 15

The ground upon which the appellants claimed asylum was related to their liability, if returned to Turkey, to perform compulsory military service on pain of imprisonment if they refused. The House of Lords in a unanimous judgement dismissed the appellants' appeals. The House of Lords found that there is no internationally recognised right to object to military service on grounds of conscience, so that a proper punishment for evading military service on such grounds is not persecution for a Convention reason.

3.10.7 Conclusion Applications based solely on desertion will not attract a grant of asylum. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status states that fear of prosecution or punishment does not itself constitute a well-founded fear of persecution. The Handbook also states that a person is clearly not a refugee if his only reason for desertion or draft evasion is his dislike of military service or fear of combat. In addition, as noted in *Sepet & Another* there is no internationally recognised right to object to military service on grounds of conscience, so that a proper punishment for evading military service on such grounds is not persecution for a Convention reason. Therefore it is unlikely that applicants in this category would qualify for asylum or Humanitarian Protection. Caseworkers should refer to section 3.14 when considering prison conditions.

3.11 Journalists

⁴⁸ COIS Algeria Country Report para 5.54

⁴⁹ COIS Algeria Country Report para 5.55

⁵⁰ War Resisters' International, 30 June 1998, p2

⁵¹ COIS Algeria Country Report para 5.40

⁵² Canadian IRB, 7 June 2005

- 3.11.1** Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of the State due to their work.
- 3.11.2 *Treatment.*** The Government's use of defamation laws to harass and arrest journalists, its closure of two papers for debts to the state-owned printing house, and its continued grant of an advertising monopoly to the state-owned advertising agency intimidated papers into practising a degree of self-censorship. Although the press was able to criticise government shortcomings and to highlight pressing social and economic problems, it faced significant repercussions from the Government for doing so.⁵³
- 3.11.3** The Human Rights Watch Annual Report for 2003 notes: "Private newspapers, in spite of repressive press laws, often criticized government actions, publishing eyewitness accounts of the gendarmerie's suppression of demonstrations, and accusing officials and state institutions of corruption, nepotism, and incompetence."⁵⁴ However Amnesty International, in an interim report, published on 25 May 2005, of its fact-finding mission to Algeria on 6–25 May 2005, stated "The [AI] delegation expressed its consternation at the considerable number of judicial proceedings against journalists in recent months, proceedings that regularly result in prison sentences and/or considerable fines."⁵⁵
- 3.11.4** Amnesty International in their 2003 report, stated that changes were made to Algeria's Penal Code in June 2001 restricting press freedom. Amendments to the law prescribed prison terms of up to one year and fines of up to 250,000 dinars (approximately US\$ 3,200) for individuals found guilty of defaming the President of the Republic or other state institutions such as the army, parliament or the judiciary, using the written or spoken word or an illustration. The editor and publisher of an offending article or illustration are also liable to be prosecuted.⁵⁶ However the USSD report for 2004 noted that the law permits the Government to levy fines and jail time against the press in a manner that restricts press freedom. Those convicted face prison sentences that range from 3 to 24 months and fines of \$715 to 7,150 (50,000 to 500,000 dinars). During 2004, at least 10 prosecutions occurred under the Penal Code.⁵⁷ Nevertheless, the print media remain among the most vibrant in the Arab world.⁵⁸
- 3.11.5 *Sufficiency of Protection*** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.11.6 *Internal relocation.*** As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.
- 3.11.7 *Caselaw***
NO Algeria CG [2002] UKIAT 04664
 The Tribunal found that the appellant, on his own evidence, wrote only on social matters, and so, would not have brought himself to the notice of any terrorist fundamentalist groups, and would have had no reasonable degree of likelihood of being killed by them. (para 27) They added that even if he were to face any charge, or to be sued for defamation, which we are satisfied that he would not, any sanction or sentence would be so low as not to amount to persecution or inhuman or degrading treatment; and, in any event, he would have recourse to the Courts for redress if he found the sentence or fine to be too harsh.
- 3.11.8 *Conclusion*** The degree of adverse attention that a journalist will receive will be entirely dependant on the content of the articles they have written. Whilst the authorities have

⁵³ COIS Algeria Country Report para 6.74

⁵⁴ COIS Algeria Country Report para 6.77

⁵⁵ COIS Algeria Country Report para 6.80

⁵⁶ COIS Algeria Country Report para 6.81

⁵⁷ COIS Algeria Country Report para 6.84

⁵⁸ COIS Algeria Country Report para 6.83

ratcheted up their penal code against “defamatory” articles the Algerian media is still considered the most active in the Arab world. Caseworkers will need to consider the charges against the individual, however it will be unlikely that even with a general acceptance that the individual will be convicted, any sanction or sentence would be so high as to amount to persecution or a breach of Article 3, therefore a grant of asylum or Humanitarian Protection will not be appropriate in most cases.

3.12 Returning failed asylum seekers

3.12.1 Some claimants will apply for asylum based on ill treatment amounting to persecution at the hands of the state authorities due to them returning to Algeria having claimed asylum in another country.

3.12.2 *Treatment.* UNHCR in December 2004 expressed concern that asylum seekers found not to be in need of international protection, who are returned to Algeria may face hostile treatment due to the Algerian Government's perception that such persons may have been involved in international terrorism. Furthermore the GSPC and GIA have networks operating within the Algerian and other North African communities in European countries.⁵⁹ Both groups are proscribed within the UK.

3.12.3 UNHCR further noted that the above factors contribute to the suspicion with which rejected asylum seekers would be treated upon return to Algeria, notably those persons who have had prior links to Islamist movements. UNHCR conclude, therefore, that there is a strong presumption that such persons may be subject to persecutory treatment upon return.⁶⁰

3.12.4 *Sufficiency of protection.* As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.

3.12.5 *Internal relocation.* As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.

3.12.6 *Caselaw.*

MM [2003] UKIAT 00089 CG

Taking into account the fact that the appellant does not have a political or illegal Islamist past, the Tribunal found that the appellant might encounter forms of physical ill treatment but will not be at real risk of harm so severe as to contravene the Refugee or Human Rights Convention (paras 15 & 16). The possibility of maltreatment existed but the IAT considered it inconceivable that if there was any real risk of treatment on a more than isolated basis of returned failed asylum seekers no word of it has reached any of the embassies (paras 16 & 17). For this appellant there is a real risk that he will be detained under the *gard a vue* procedures but there is not a real risk of the sort of physical harm that engages either the Refugee or HR Convention (para 18).

3.12.7 *Conclusion.* There is no evidence to suggest that individuals who have been absent from Algeria for any period of time or who are returning failed asylum seekers are liable for treatment amounting to persecution by the authorities solely for these reasons. Moreover, there is no evidence that an application for asylum abroad, should the authorities become aware that one had been made, will in itself put an Algerian at risk of state-sponsored ill-treatment amounting to persecution within the terms of the 1951 Convention. The grant of asylum in such cases is therefore not likely to be appropriate. However claimants will generate increased interest from the Algerian authorities if they do not return on their own passport and have had an identifiable political or illegal Islamist past. Whilst AIS and FIS members are able to benefit from the Amnesty in Algeria and so would not be at a real risk of persecution on return, GIA or GSPC members are likely to face a real risk of being identified by the Algerian authorities and suffering persecution on return to Algeria. Caseworkers should refer back to guidance under section 3.7. Whilst the majority of claimants would fall within these four political groups, there may be some individuals who

⁵⁹ UNHCR position paper, December 2004

⁶⁰ UNHCR position paper, December 2004

can demonstrate that they have had a political or illegal Islamist past that is not as a result of their membership of such groups. Careful consideration will need to be given as to whether such activities have come to the attention of the authorities in the past and would be likely to generate an adverse interest from the authorities on return to Algeria. A grant of asylum may be appropriate in individual cases.

3.13 Prison conditions

3.13.1 Claimants may claim that they cannot return to Algeria due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Algeria are so poor as to amount to torture or inhuman treatment or punishment.

3.13.2 *Consideration.* Prison conditions generally met international standards, and the U.N. Development Program (UNDP) noted improved conditions in civilian and low security prisons as a result of prison reform efforts undertaken by the Ministry of Justice. The UNDP also worked with the Government to improve educational programs in prisons. However, overcrowding, insufficient medical treatment, and the Government's continued refusal to allow international observers access to military and high security prisons remained problems. In October 2003, the media reported there was 1 doctor for every 300 prisoners.⁶¹

3.13.3 *Political Prisoners* The Europa Middle East and North Africa Regional Survey, 2005 edition reported: "After the [November 1995] presidential election the internment camp in the Sahara for alleged Islamist militants was closed and its inmates released. However, some 17,000 Algerians remained imprisoned – the majority without trial – for alleged terrorist activities." The Europa Report continued to note that five thousand such prisoners were pardoned on 5 July 1999. The USSD report for 2004, published 28 February 2005, stated "There were no reports of political prisoners."⁶² While the Government permitted visits by independent human rights observers to regular, non-military prisons, it did not permit visits to its military or high security prisons. In October 2004, the International Committee of the Red Cross (ICRC) visited civilian prisons and pre-trial centres, but it was still barred from the country's military and high security prisons.⁶³

3.13.4 Amnesty International in a September 2003 report stated that in cases involving political protesters, torture may be used by the security forces to punish the detainee and deter others from taking similar action. Torture was being used systematically in 'terrorism'-related cases and selectively in other political and criminal cases. Convictions are often made, largely or solely, on the basis of statements obtained in the custody of the security forces under duress, prejudicing the right to a fair trial and leading to long prison sentences.⁶⁴

3.13.5 *Caselaw*

SG [2005] UKIAT 00031

The Tribunal considered that prison conditions had improved over the years and that the objective material does not show that prison conditions in military prisons are harsh to the extreme that they cross the high threshold to amount to a breach of the claimant's Article 3 rights. (para 29 and para 31)

3.13.6 *Conclusion* Whilst prison conditions in Algeria are poor with overcrowding a particular problem, conditions for ordinary, non-political prisoners including those held in military prisons are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Algeria a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the

⁶¹ COIS Algeria Country Report para 5.50

⁶² COIS Algeria Country Report para 5.52

⁶³ COIS Algeria Country Report para 5.53

⁶⁴ COIS Algeria Country Report para 6.16

likely length of detention the likely type of detention facility and the individual's age and state of health.

- 3.13.7** Prison conditions in Algeria for political prisoners are severe and taking into account torture and an absence of adequate medical care, conditions for such individuals in prisons and detention facilities in Algeria are likely to reach the Article 3 threshold. Where the real risk of imprisonment is related to one of the five Refugee Convention grounds, particularly political or imputed political opinion, a grant of asylum will be appropriate. Caseworkers should refer to section 3.7 for guidance on when a grant of asylum is not appropriate in such cases (i.e. where the exclusion clauses may apply).

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave)
- 4.2** With particular reference to Algeria the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

4.3 Minors claiming in their own right

- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care or support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception arrangements in place. Amnesty International in a report dated 1 June 2003 stated that they were unaware of any NGO playing a role in the tracing of parents of relatives, nor AI stated, given the difficulties of access to information in Algeria, is it easy to imagine any NGO being able to play such a role. Amnesty International has no information about state or charity care of unaccompanied minors who are returned to Algeria.⁶⁵
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care or support arrangements, should if they do not qualify for leave on any more favourable grounds be granted DL for a period of three years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

- 4.4.1** Claimants may claim they cannot return to Algeria due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** The Government provided free medical care for all citizens, albeit in often rudimentary facilities.⁶⁶ The Algerian Ministry of Health and Population in their report of April 2003 shows 1 doctor per 967 inhabitants, and a threefold increase in the number of polyclinics since 1990, leading to a current ratio of 1 polyclinic per 61 inhabitants.⁶⁷ Algeria has a national strategic plan on AIDS for 2003-2006. This includes a budget to provide 100% anti-retroviral treatment.⁶⁸

⁶⁵ COIS Algeria Country Report para 6.172

⁶⁶ COIS Algeria Country Report para 5.56

⁶⁷ COIS Algeria Country Report para 5.61

⁶⁸ COIS Algeria Country Report para 5.66

4.4.3 In 2001 the World Health Organisation (WHO) reported that there were 2 psychiatrists per 100,000 population (compared with 11 in the UK). WHO also reported that mental health care was present in the primary health care system; while severe mental disorders were diagnosed in the primary health care system treatment of these was only available at hospitals.⁶⁹ The WHO report of 2001 stated that other therapeutic drugs that were generally available at primary health care level were: Carbamazepine, Ethosuximide, Phenobarbital, Phenytoin sodium, Sodium Valproate, Amitriptyline, Chlorpromazine, Diazepam, Fluphenazine, Halperidol and Levodopa. Biperiden and Carbidopa were not available and the availability of Lithium was unknown.⁷⁰

4.4.4 Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Please see section 3.12 for further information on the return of failed asylum seekers.

5.2 Algerian nationals may return voluntarily to any region of Algeria at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Algeria. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Algerian nationals wishing to avail themselves of this opportunity for assisted return to Algeria should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

6. List of source documents

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⁶⁹ COIS Algeria Country Report para 5.67

⁷⁰ COIS Algeria Country Report para 5.68

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