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Dear Ms. Jackman,

Amnesty International is writing to provide an update with respect to the human rights risks, including violations of the right to a fair trial and the prohibition of torture and other ill-treatment, that Mohamed Harkat is likely to face if he is deported to Algeria. Amnesty International continues to be of the view that he is at risk of these serious human rights violations in Algeria and is therefore urging that he not be removed from Canada.

This letter supplements our previous letter, dated 28 March 2016, addressed to the Minister of Immigration, Refugees and Citizenship Canada's Delegate. The content of this letter is based on credible, publicly available sources, as well as information from our expert Algerian research team based at our International Secretariat's Regional Office in Tunis, Tunisia.

International legal standards

Amnesty International continues to underline the fact that the international legal principle of *non-refoulement* – that is, the prohibition of return to a real risk of irreparable harm or where there are substantial grounds to believe that there would be danger to be subjected to torture – is binding upon Canada as a state party to the *International Covenant on Civil and Political Rights* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The prohibition of *refoulement* to torture and other ill-treatment is also a customary rule of international law, binding on all states, regardless of whether they have ratified the relevant conventions.

Unfair Proceedings against Individuals Charged with Terrorism Offences

Amnesty International remains concerned about Mohamed Harkat's access to a fair trial in Algeria, including the treatment he may receive in pre-trial custody in view of the allegations by Canada, extensively publicized for many years, that he has committed terrorism offenses. In July 2018, we reported the following:

Despite its recent amendment, the Code of Criminal Procedure still fails to guarantee due process rights and allows for arbitrary pre-trial detention. Under Article 51 of the Code of Criminal Procedure, detainees suspected of terrorism-related offenses can be held legally for a period of up to 12 days without access to legal counsel or charge.¹

¹ Amnesty International, *Algeria: Submission to the United Nations Human Rights Committee, 123rd Session, 2-27 July 2018* (Index: MDE 28/8455/2018), online: <https://www.amnesty.org/download/Documents/MDE2884552018ENGLISH.pdf>, p. 11.

Moreover, in its Concluding Observations on the Fourth Periodic Report of Algeria in July 2018, the United Nations Human Rights Committee (UNHRC) recommended that Algeria amend the Criminal Code “so that it clearly defines what constitutes an act of terrorism.”² Equally troubling is the fact that the use of confessions obtained under torture is not expressly prohibited by law in Algeria.³ This illustrates that Algeria lacks the legal framework to guarantee those charged with terrorism offences with a fair trial.

In addition, Amnesty International’s documentation of trials in 2017 against activist Kamaledine Fekhar and other Mزاب Autonomy Movement members raises serious concerns about access to fair trials in Algeria in the context of terrorism offences. Mr. Fekhar, along with 40 co-defendants, was accused in separate proceedings of crimes that included murder and terrorism. Of the 41 defendants, 37 had been held in pre-trial detention for long periods, many for as long as two years, in spite of the fact that the authorities did not provide a justification for their continued detention.⁴

In one of the proceedings, case 15/0133, the Ghardaia Court of Appeals sentenced Kamaledine Fekhar and 21 co-defendants to prison sentences ranging from three to five years, partially suspended. All were then released between May and July 2017 after having served their sentence. Referring to the case, the UN Working Group for Arbitrary Detention concluded in July 2017, in its Opinion 34/2017, that Kamaledine Fekhar’s detention had been arbitrary because of the gravity of breaches of his fair trial rights, including the lack of a legal basis for his 22-month pre-trial detention given that Algerian law only provides for a maximum of eight months in pre-trial detention, as well as harassment of his lawyer.⁵

Amnesty International researchers have monitored those trials and have reviewed the judgement. Many offences which the prosecution charged the defendants with, including terrorism and other national security offences, were vaguely defined, violating the principle of legality. After their arrest, high-ranking government officials made public statements accusing some defendants before the court reached its verdict, violating their presumption of innocence. The court did not detail its reasoning for their conviction during the trial or in the written verdict, merely reproducing the questioning of suspects in court and detailing the sentencing, violating defendants’ right to a reasoned judgement. Finally, the Ghardaia Court of First Instance referred the defendants’ main defence lawyer, Salaheddine Dabbouz, to trial in relation to comments he made on television about unrest in Ghardaia and for allegedly carrying a computer and camera during a visit to detained activists. The court had kept him under judicial supervision from July 2016 until March 2017, forcing him to travel more than 600 kms, twice per week, from his home in Algiers to report to the court in Ghardaia.⁶

Mohamed Harkat is accused by Canadian authorities of participating in terrorism-related activities, which have been reported extensively in the media.⁷ As such, he is likely to be viewed as a suspected terrorist by

² United Nations Human Rights Committee, *Concluding observations on the fourth periodic report of Algeria* (CCPR/C/DZA/CO/4), 17 August 2018, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/252/25/pdf/G1825225.pdf?OpenElement>>, para. 18.

³ *Ibid*, para. 31.

⁴ Amnesty International, *Algeria: Ensure Fair Trial for Minority Rights Activists*, (Index: MDE 28/6369/2017), 29 May 2017, online: < <https://www.amnesty.org/en/latest/news/2017/05/algeria-ensure-fair-trial-for-minority-rights-activists-fekhar-and-other-amazigh-rights-advocates-held-since-july-2015/>>; *Supra*, note 1 at p. 11.

⁵ See Working Group on Arbitrary Detention, Opinion no. 34/2017, concerning Kamaledine Fekhar (Algeria) (UN Doc. A/HRC/WGAD/2017/34), 5 July 2017.

⁶ Algeria entry in *Amnesty International report 2016/17, the state of the world’s human rights*, <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>

⁷ Jim Bronskill, “Judge loosens some of terror suspect Mohamed Harkat’s release conditions,” *The Globe and Mail* (24 January 2018), available online: <https://www.theglobeandmail.com/news/national/judge-loosens-some-of->

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Algerian authorities. Due to clear deficiencies in Algeria's legal framework and practice, Amnesty International considers that Mr. Harkat is unlikely to receive a fair trial if prosecuted in Algeria.

Solitary Confinement, Torture and other ill-treatment

Amnesty International is deeply concerned that Algerian authorities do not comply with their international obligations concerning the prohibition of torture, as well as their obligations to investigate allegations of torture and other ill-treatment, hold perpetrators to account and provide redress to victims.

In a recent example, Amnesty International has documented the case of journalist Adlène Mellah. He was arrested in October 2018, during which time he reported being beaten and waterboarded by *gendarmérie* officers who placed a cloth doused in bleach into his mouth three times.⁸ Although a court provisionally released him in November 2018, according to Adlène Mellah no investigation into the torture claims has been initiated to date. In December 2018, he was arrested for covering a peaceful public gathering in Algiers and was held in solitary confinement for over one month, according to his lawyers.⁹ According to the UN Standard Rules for the Treatment of Prisoners (Mandela Rules), a lack of meaningful contact with other detainees for at least 22 hours a day for more than 15 days constitutes prolonged solitary confinement amounting to torture or other cruel, inhuman or degrading treatment.¹⁰ On 23 January 2019, Mr. Mellah was convicted, sentenced to a six month suspended prison term and released the same day.

In addition to breaching its international legal obligations with respect to the prohibition against torture, Amnesty International is of the view that Algeria has not fulfilled its international legal obligations to put in place adequate safeguards in place to deter, prosecute, and remedy acts of torture and other ill-treatment. In July 2018, the UN Human Rights Committee (UN HRC) expressed concerns regarding "claims that torture and ill-treatment continue to be used in counter-terrorism operations, in particular by personnel of the Department of Surveillance and Security."¹¹ The UN HRC further noted that "so few of the officers who committed acts of torture and ill-treatment have been prosecuted and punished and that article 45 of

[terror-suspect-mohamed-harkats-release-conditions/article37724813/](https://www.amnesty.org/en/latest/news/2019/01/algeria-absurd-conviction-of-journalist-adlene-mellah-must-be-overturned/); Jim Bronskill, "Terror suspect Mohammed Harkat poses low risk of violence, psychiatrist tells hearing," *The Toronto Star* (17 November 2017); Andrew Duffy, "Has Ottawa terror suspect Mohamed Harkat been de-radicalized?" *Ottawa Citizen* (12 December 2016).

⁸ Amnesty International, *Algeria: Absurd conviction of journalist Adlène Mellah must be overturned*, 22 January 2019, online: <<https://www.amnesty.org/en/latest/news/2019/01/algeria-absurd-conviction-of-journalist-adlene-mellah-must-be-overturned/>>

⁹ *Ibid.*

¹⁰ United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): 8 January 2016, A/RES/70/175, rules 43 1)(b) and 44, online: <<https://www.refworld.org/docid/5698a3a44.html>>.

¹¹ In January 2016, the Department for Information and Security (known as DRS), which wielded wide powers of arrest and detention, including incommunicado detention of terrorism suspects, was dissolved by an unpublished presidential decree. The DRS has been replaced by a new body, the Direction of Security Services (DSS), which reports directly to the President. Amnesty International has not been able to assess the impact of these recent reforms due to the lack of transparency regarding the new DSS structure. The short period of time since the reform took place does not allow a reliable assessment as to whether the reforms have been implemented in a manner that addresses the serious concerns about incommunicado detention and ill-treatment in custody expressed in our previous letter. Notably Amnesty International has not been able gather evidence concerning human rights violations against persons in the custody of the DSS due to the lack of access to the country for the organization's fact-finding missions in recent years. In the light of the above, Amnesty International has no basis for concluding that persons in DSS custody are not being subjected to torture and other ill-treatment, or other human rights violations, and remains concerned that the risks identified in our previous letter remain current.

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Ordinance No. 06-01 of 27 February 2006 (on the implementation of the Charter for Peace and National Reconciliation), although it applies to a period in the past, in fact fosters to this day a climate of impunity for law enforcement personnel (art. 7)." The Committee recommended that Algeria "ensure that suspected cases of torture and ill-treatment committed by law enforcement personnel, including personnel of the Department of Surveillance and Security, are thoroughly investigated, that perpetrators are prosecuted and, if found guilty, sentenced to appropriate punishment and that victims receive compensation and, in particular, are offered rehabilitation assistance."¹² The UN HRC also called on Algeria to "establish a national mechanism for the prevention of torture" which has not yet been put in place.¹³

The absence of safeguards to hold accountable those responsible for torture and other ill-treatment was recently confirmed by Algerian lawyers over the course of interviews that Amnesty International carried out in Algiers in March 2019.

Conclusion

Amnesty International is of the view that if Mohamed Harkat were to be returned to Algeria, he would be at risk of being detained in circumstances which could include prolonged solitary confinement, as well as forms of treatment that constitute torture or other ill-treatment. Amnesty International also considers it likely that Mr. Harkat would be subjected to an unfair trial, particularly given the degree to which he has been publicly identified and described by Canadian officials as a terrorism suspect and "security threat". In these circumstances Amnesty International urges that Mohamed Harkat not be removed from Canada.

Sincerely,

Alex Neve
Secretary General

¹² *Supra*, note 2, para 34 (b).

¹³ *Ibid*, para. 34 (c).