

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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The United Kingdom cannot deport security suspects at risk of torture to Algeria without violating international law. British Foreign Secretary Jack Straw said after official talks in Algiers on February 16 that good progress had been made on a deportation agreement and that both countries wanted to sign as soon as possible, according to Reuters news agency.

The proposed agreement reportedly resembles the memoranda of understanding (MOUs) that the U.K. has already reached with Jordan, Lebanon, and Libya. Under these memoranda, the receiving governments provide diplomatic assurances that they will not mistreat persons that the other country transfers to their territory.

These MOUs will not prevent torture, said Sarah Leah Whitson, executive director of Human Rights Watch's Middle East and North Africa division. On the contrary, they are tacit admissions that torture is practiced and that these individuals are at risk.

Under the agreement, Algeria stands to gain custody of its nationals now in U.K. custody and Britain can rid itself of Algerians it has labeled as security threats but is either unwilling or unable to prosecute. The memorandum is designed to address the fact that international law prevents the transfer of persons to countries where they are at risk of torture.

Such agreements are inherently unreliable, and have been widely criticized by international human rights experts, including U.N. High Commissioner for Human Rights Louise Arbour, U.N. Special Rapporteur on Torture Manfred Nowak, and outgoing Council of Europe Commissioner for Human Rights Alvaro Gil-Robles.

The British government should be encouraging Algeria to take positive action to eradicate torture, instead of looking for ways around the obligation not to return people at risk of torture, Whitson said. If there is real evidence that these suspects pose a threat they should be prosecuted in the British courts.

The U.K. and Algeria are parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which contains an absolute prohibition on the transfer, return (refoulement), or expulsion of persons to countries where there are substantial grounds for believing that they would be in danger of being subjected to torture. The U.K. is also a party to the European Convention on Human Rights and Fundamental Freedoms, which was incorporated into its domestic law by the Human Rights Act 1998. That convention also provides for an absolute ban on acts of torture and transfers to countries where there is a risk of torture.

The British Home Office detailed the practice of torture in Algeria in an April 2004 report that was prepared by the Country Information and Policy Unit and is used in assessing asylum claims. Human Rights Watch last visited Algeria in June 2005 and concluded that the authorities continue to practice torture, especially during interrogation of security suspects, although the number of reported cases has declined since the years of intensive political strife in the mid-1990s.

In 2004, Algeria adopted an amendment to its penal code criminalizing torture. But if the Algerian government were to sign such an MOU, it would in effect be acknowledging that its adoption of domestic laws and its ratification of international conventions are insufficient guarantees that its agents do not practice torture. The U.K.'s pursuit of an MOU constitutes recognition of this reality.

Last week, Algerian authorities also effectively sanctioned impunity for torture and other human rights abuses committed during the years of rampant civil strife in the 1990s. On February 27, the cabinet enacted a law granting a sweeping amnesty for all security force members. The law, in the guise of peace and national reconciliation, exempts from prosecution any actions taken during the national tragedy whose purpose was to protect persons and property, or to safeguard the nation and state institutions.

The earlier agreements Britain reached with Jordan, Libya and Lebanon represent an effort to circumvent the strict non-refoulement obligations under the Convention against Torture and the European Convention on Human Rights. In recognition of the problem, the three MOUs contain a measure that purports to act as a safeguard against abuse: the establishment of a body, nominated jointly by the

two signatory governments, which can periodically visit and privately interview any person whom the receiving state takes into custody, and then report on those visits to the sending state.

In reality, such post-return monitoring will not protect returnees from torture. Straw admitted the difficulties to a parliamentary committee in December 2005: The other problem about torture is that those who commit the torture deny it to themselves as much as they deny it to other people, so to track it is very difficult.

When countries promise not to impose the death penalty as a condition for obtaining a criminal suspect from another country, compliance is easily determined. But torture is universally condemned and nearly always clandestine. As Arbour has noted, These practices often occur in secret, with the perpetrators skilled at keeping such abuses from detection. The victims, fearing reprisal, often are reluctant to speak about their suffering, or are not believed if they do.

What is more, neither a sending nor a receiving country has any incentive to expose or confront abuse, since doing so would implicate the receiving country in torture and the sending country in violating the prohibition against refoulement.

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