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Algeria

Briefing to the Human Rights Committee

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TABLE OF CONTENTS

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Introduction

Amnesty International submits this briefing for consideration by the Human Rights Committee in view of its forthcoming examination of Algeria's third periodic report on measures taken to implement the provisions of the International Covenant on Civil and Political Rights (ICCPR). This briefing summarizes some of Amnesty International's main concerns on Algeria, as documented in a number of the organization's past reports. The organization highlights in particular its concerns about the failure of the state party to fully comply with its obligations under Articles 2, 3, 4, 6, 7, 9, 12, 13, 14, 15, 17, 18, 19, 21, 22 and 24 of the ICCPR. These concerns relate broadly to the failure of the state party to provide an effective remedy to victims of human rights abuses, continuing discrimination against women and a persistent pattern of secret detention and torture.

Algeria submitted its third periodic report[1] to the Human Rights Committee in December 2006, six years late. Algeria's second periodic report to the Human Rights Committee was considered in 1998. At the time, the country was in the midst of an internal conflict, sparked by the cancellation in 1992 of the multi-party elections which the Islamic Salvation Front (*Front Islamique du Salut*, FIS), an Islamist political party, was widely expected to win. A state of emergency was declared, the FIS was banned and the military took power. Seeking to claim the electoral victory of the FIS by means of violence, armed groups targeted state institutions and increasingly civilians thought to have backed the military coup, or to have failed to conform to their conception of "Islamic" values. Armed groups have been responsible for widespread human rights abuses, including unlawful killings, abductions, torture and rape, abuses which Amnesty International abhors and condemns. The Algerian authorities also played a major part in escalating the violence to root out support for the FIS by some sections of the population, in the name of countering terrorism. The state security forces and, later, state-armed militia (referred to by the authorities as "legitimate defence groups", "self-defence groups" or "patriots") committed massive human rights violations, including extrajudicial executions and other unlawful killings, enforced disappearances, secret and arbitrary detentions, and torture and other ill-treatment of thousands of real or suspected members or supporters of armed groups.

Today, Algeria is emerging from more than a decade of violence in which as many as 200,000 people[2] are believed to have been killed. The Algerian government has sought to turn the page on the violence by adopting amnesty measures for members of armed groups who laid down their arms, in 1999 and 2000, and more recently in 2005-2006. Although the level of violence has markedly reduced since the end of the 1990s, killings still occur today. According to

[1] CCPR/C/DZA/3, 7 November 2006

[2] It is not possible to give an exact number of those killed since 1992 in Algeria. The authorities estimated in 2006 that as many as 200,000 people may have been killed in the context of the violence.

media reports, which rely on security sources and cannot be independently verified, more than 300 people were killed by either armed factions or government security forces in 2006, including over 70 civilians. 265 people were reported to have been killed between 1 January and 1 August 2007[3] in the context of continued fighting between security forces and remaining armed factions who have refused to surrender under the government amnesty measures. In 2007, there has been a resurgence of bomb attacks, some of which appear to have deliberately targeted civilians. For instance, on 11 April bomb attacks in Algiers killed 33 people and injured more than 200. On 6 September, a suicide attack in Batna killed at least 22 people and injured 107, after the attacker reportedly triggered a bomb in the middle of a crowd gathered for a visit by President Abdelaziz Bouteflika in the town. Amnesty International condemned both attacks.[4]

Responsibility for these attacks was claimed by the Salafist Group for Preaching and Combat (Groupe Salafiste pour la Prédication et le Combat, GSPC) which, according to a statement posted in January 2007 on a website believed to be linked to the group, reportedly changed its name to the al-Qa'ida Organization in the Islamic Maghreb. The GSPC is alleged to be the main remaining armed faction fighting against the Algerian authorities, although its leadership, composition and motivations are more and more unclear. It is increasingly difficult to discern a clear rationale behind most attacks by armed factions, whose members are also believed to engage in other criminal activities, such as smuggling, protection rackets and money-laundering. The reported affiliation of the GSPC to al-Qa'ida seemed to correspond with an increasing targeting of civilians through the use of suicide and other bomb attacks.

The grim legacy of the conflict weighs heavily on the Algerian people. No section of the society has been left untouched by the violence. Rather than addressing this legacy in conformity with their obligations under the ICCPR, the Algerian authorities have endorsed impunity and effectively deprived victims of their right to obtain truth, justice and reparations. The almost complete *de facto* impunity enjoyed by members of the security forces and state militia has been extended to members of armed groups, who have, since 1999, benefited from successive amnesty measures, failing to recognize the right of the victims to obtain an effective remedy for the violations to which they were subjected. Impunity has been firmly entrenched under recent presidential decrees, issued in February 2006, implementing the Charter for Peace and National Reconciliation, a framework document adopted by national referendum in 2005.

Notwithstanding the decrease in violence and gross human rights abuses associated with the internal conflict, serious violations of the rights enshrined in the ICCPR continue in Algeria, including secret detention and torture by the Department for Information and Security (Département du Renseignement et de la Sécurité, DRS), a branch of the Algerian intelligence services, in the context of the government's counter-terrorism operations. Legal provisions

[3] "*Algeria violence death toll more than doubles*", Reuters, 1 August 2007

[4] See *Algeria: Amnesty International condemns Algiers bomb attacks* (AI index MDE 28/009/2007, 11 April 2007) and *Algeria: Amnesty International condemns suicide attack in Batna* (AI index MDE 28/016/2007, 7 September 2007)

introduced in national law in 2004criminalizing torture, while welcome, have not put an end to persistent allegations of torture by members of the DRS.

The Algerian authorities have taken many positive steps to address discrimination between men and women, which is entrenched in law and in practice. They substantially amended the Family Code and the Nationality Code in 2005 to give women more rights, by adopting Decree no 05-02 of 27 February 2005, amending and completing Law no. 84-11 of 9 June 1984, the Family Code and Decree no 05-01, amending the Nationality Code. A law criminalizing sexual harassment in the workplace was adopted in 2004. The authorities allowed a visit by the United Nations (UN) Special Rapporteur on Violence Against Women in February 2007. This is notable because, apart from a visit by the UN Special Rapporteur on freedom of religion or belief in 2002, and the principle of a visit of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Algerian government has not acceded to other requests to visit the country made by UN human rights experts, including the Special Rapporteur on Torture, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion and protection of human rights while countering terrorism. However, Algerian law still contains provisions which discriminate between men and women. Moreover, the authorities have not taken sufficient measures to protect women from violence, whether in the context of the conflict or within the family.

Structural changes are needed if Algeria is to overcome the consequences of the human rights crisis which has blighted the country, in particular changes in law and in practice which reflect Algeria's obligations under the ICCPR. In this respect, we are concerned that the recommendations of the Human Rights Committee to the Algerian authorities in 1998 have not been adequately implemented and that this may signal a lack of political will on the part of the Algerian authorities to fully subscribe to their obligations under international human rights law.

Article 2: the right to an effective remedy

Article 2.3 of the Covenant lays down the obligations of state parties to provide an effective remedy to persons whose rights, as enshrined in the ICCPR, have been violated. Article 2.3 insists that victims should have a judicial remedy.

The Algerian people have suffered grave and widespread violations of their human rights in the context of the internal conflict, including violations of the right to life (Article 6 of the ICCPR), violations of the right not to be subjected to torture or other cruel, inhuman or degrading treatment (Article 7), violations of the right to liberty and security (Article 9), violations of the right to a fair trial (Article 14) and violations of the right to recognition as a person before the law (Article 16). Yet, to date, the Algerian authorities have largely failed to investigate fully, independently and impartially these grave human rights violations. Algeria's third periodic report, in response to the recommendations of the Human Rights Committee of

1998[5] to hold proper and independent investigations into such human rights violations, stated only that the Algerian Parliament was entitled to set up a Commission of Inquiry, and that to have done so "would have cast doubt upon the identity of the perpetrators and lent credence to the claims made by certain NGOs, often based on anonymous witness accounts that are impossible to verify".

The Algerian authorities have, since 1999, adopted a series of legislative measures, aiming at "turning the page" on the conflict and at "peace and reconciliation", which have prevented victims of human rights abuses committed by both armed groups and state security forces to obtain truth, justice and reparation, the very principles which underpin the right of victims to an effective remedy. Amnesty International is not opposed to measures of clemency and pardon, as long as they do not prevent the emergence of the truth, a final judicial determination of guilt or innocence and full reparation for victims and their families. Moreover, amnesty measures, if they provide impunity, undermine confidence in the justice system and future human rights protection. Amnesty International believes that the victims of serious crimes under international human rights and humanitarian law, such as those which were committed in Algeria, must be given guarantees of non-repetition, that is, assurances that perpetrators are prosecuted and that future crimes will not remain unpunished.

Amnesty measures adopted by the Algerian authorities

During the period under review in this briefing, the Algerian authorities adopted two significant sets of amnesty measures: the first one was adopted in 1999-2000 and the second one in 2005-2006.

The Civil Harmony Law (No. 99-08) was passed and entered into force on 13 July 1999, after having been approved by the government and voted by the parliament and the senate. Two months later, in September 1999, it was also put to a national referendum which gave it large popular support.[6] Under this law, members of armed groups who surrendered to the authorities within six months from the date the legislation was passed and who had not committed or participating in killing, raping, causing permanent disability or placing bombs in public places were exempt from prosecution. Those who had committed such crimes were to receive reduced sentences, which would be further reduced for those surrendering within three months. The same measures applied to those who were convicted of such crimes or who were awaiting trial on such charges.

Those wishing to surrender under the Civil Harmony Law could turn themselves in to the military, civilian, administrative or judicial authorities, who were to decide whether the person should be granted exemption from prosecution or brought to trial. In addition, the law contained a discretionary probation provision. For this purpose, Executive Decree no 99-142 established probation committees in each *wilaya* (province), presided over by the general

[5] CCPR/C/DZA/Q/3, 20 August 2007

[6] The question asked in the referendum and to which the voters could respond by yes or no was: "Do you agree with the President's approach to restoring peace and civil harmony?"

prosecutor responsible for the area and composed of representatives of the Ministries of Defence and of the Interior, the commander of the gendarmerie for the *wilaya*, the chief of security for the *wilaya*, and the head of the Bar Council or his or her representative.

Using Article 41 of the Civil Harmony Law, President Bouteflika passed Presidential Decree no 2000-03 on 10 January 2000 granting amnesty to the members of two groups which had declared cease-fires in October 1997, the Islamic Salvation Army (*Armée islamique du salut*, AIS) and the Islamic League for Preaching and Holy War (*Ligue islamique pour la da'wa et le djihad*, LIDD). The presidential decree granted blanket immunity from judicial prosecution to "*the persons who belonged to organizations which decided voluntarily and spontaneously to put an end to acts of violence and which put themselves at the full disposal of the state and whose names are appended to the original of this decree*". No appendix containing the names of the amnesty's beneficiaries has been published to date.

Five years later, on 15 August 2005, President Abdelaziz Bouteflika issued Decree 05-278 which published as an annex the "Draft Charter for Peace and National Reconciliation", outlining a framework for measures to bring closure to the internal conflict and giving the president full authority to implement its provisions. The Charter proposed measures of exemption from prosecution or clemency for current and former armed group members, stated that security forces and state-armed militias acted in the interest of the country, and specifically denied that the security forces had been responsible for carrying out thousands of acts of "disappearance", although it promised families of the "disappeared" compensation and recognition as "victims of the national tragedy". The Charter was approved by voters in a referendum on 29 September 2005.

On 27 February 2006, the Algerian cabinet approved the "Decree Implementing the Charter for Peace and National Reconciliation".[7] The law was approved by the cabinet, presided over by President Bouteflika, before it could be debated by the parliament, which was not in session at the time. The full text of the Decree was not published or disclosed before its adoption, shutting out any debate. The Decree instituted a blanket amnesty for the security forces and state-armed militias and extended the previous partial amnesties for members of armed groups given under the Civil Harmony Law, entrenching an already pervasive sense of impunity. Both state forces and members of armed groups are accused of committing crimes under international human rights and humanitarian law that, to date, have not been investigated. In the face of criticism by Algerian NGOs, the Algerian authorities argued that the Algerian people had overwhelmingly voted in favour of the Charter in 2005. However, that Charter did not explicitly mention that state security forces would benefit from an amnesty.

Law no 06-01 of the 27 February 2006 provides an amnesty to members of armed groups who surrender or are in prison, as long as they did not "*commit, or were accomplices in, or instigators of, acts of collective massacres, rape, or the use of explosives in public places*". Specifically, it orders that judicial proceedings be stopped against: persons who have

[7] Law no 06-01 of the 27 February 2006 Implementing the Charter for Peace and National Reconciliation.

committed or been complicit in "terrorism"[8]-related offences and have surrendered to the authorities between 13 January 2000 and 28 February 2006 (Article 4 of Law no 06-01); persons who are wanted by the authorities for "terrorism"-related offences and who surrender to the authorities within six months from 28 February 2006 (Articles 5, 6 and 7 of Law no 06-01); and persons detained on accusations of "terrorism"-related offences, regardless of whether they have already been brought to trial or not (Articles 8 and 9 of Law no 06-01). The Law 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.[9]

Under the terms of the same law, those wishing to surrender can turn themselves in to Algerian embassies and consulates abroad or the judicial authorities, the national security forces and judicial police officers within Algeria (Article 12). The judicial authorities are to be notified of any surrender by such authorities (Article 14) and to stop judicial proceedings against those surrendering (Article 15). As for those who are excluded from amnesty measures, namely those who were convicted of "acts of collective massacres, rape, or the use of explosives in public places", they can benefit from a commutation or reduction of their sentence under Articles 18 and 19 of the same law.

Two separate sections below look at the impact of these laws on victims of human rights abuses by armed groups, on the one hand, and on victims of human rights violations by state agents, on the other hand.

No effective remedy for victims of human rights abuses by armed groups

The two sets of amnesty measures described above have denied victims of human rights abuses by armed groups their right to an effective remedy, and entrenched the impunity of perpetrators.

The United Nations' Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity states, "*Even when intended to establish conditions conducive to a peace agreement or to foster national reconciliation, amnesty and other measures of clemency shall be kept within the following bounds: (a) The perpetrators of serious crimes under international law may not benefit from such measures until such time as the State has met the obligation* [ ]" to "*undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished*." The Updated Principles define the phrase "*serious*

[8] For a definition of "terrorist and subversive" offences in the Algerian Penal Code, see section on Article 15 in this briefing.

[9] Although foreign governments seeking to deport Algerian nationals to Algeria on the grounds that they are suspected of terrorist activities have argued that they would not be detained or prosecuted under the 2006 Decree. For instance, see the case of Mustapha Taleb in *United Kingdom: Deportations to Algeria at all costs*, Amnesty International (AI index: EUR 45/001/2007, 26 February 2007).

crimes under international law" to include, among others, genocide, crimes against humanity, and "*other violations of internationally protected human rights that are crimes under international law and/or which international law requires States to penalize, such as torture, enforced disappearance, extrajudicial execution, and slavery*." E/CN.4/2005/102/Add.1, 8 February 2005, Commission on Human Rights, Sixty-first session, Item 17 of the provisional agenda.

Under the Civil Harmony Law (No. 99-08, 13 July 1999), members of armed groups known to have committed human rights abuses, including killings of civilians, were granted amnesty and exempted from judicial prosecution, no matter what evidence of their responsibility for such abuses may have existed at the time of them being granted amnesty or may have come to light later.

Amnesty International was told by Algerian government officials in May 2000 that prosecution had been initiated against some 350 people who had surrendered under this law (and the total number of whom, according to the same sources, is reported to be some 4,500). However, to date the authorities have not provided any exact figures concerning how many surrendered under this law, how many were prosecuted, and how many of the latter were acquitted or convicted and for what crimes.

The Algerian authorities have not published either precise official figures on how many members of armed groups benefited from exemption from prosecution under the Civil Harmony Law or the 2000 presidential amnesty. Government sources have indicated to the press that over 1,000 AIS and LIDD members benefited from the subsequent presidential amnesty and that around 4,500 members of other armed groups surrendered to the authorities under the terms of the Civil Harmony law. But the names and exact number of those who benefited from immunity were not published.

Some families of people who were killed by armed groups have since told Amnesty International that those who are responsible for the killing of their relatives were exempted from prosecution under either the Civil Harmony law or the presidential amnesty of 10 January 2000. This has led Amnesty International to believe that full and thorough investigations had not been carried out to establish what crimes surrendering armed group members might or might not have committed.[10]

Since 13 January 2000, hundreds more armed group members are reported to have surrendered to the authorities. During this time, no legal provisions were in place to allow such persons to be granted exemption from prosecution, or even to receive reduced penalties. Justice Ministry officials confirmed this during a meeting with Amnesty International delegates in February 2003, stating that all armed group members who gave themselves up were systematically brought to justice so that any crimes they might have committed could be investigated. However, government authorities, including President Bouteflika himself, have

[10] For more information, see *Algeria: Truth and justice obscured by the shadow of impunity*, Amnesty International (AI index: MDE 28/11/00, November 2000).

indicated, since January 2000, that members of armed groups who surrendered voluntarily would still benefit from some unspecified measures of clemency.[11]

Law no 06-01 implementing the l Charter for Peace and National Reconciliation suggests that people have indeed surrendered after January 2000, as it confers exemption from prosecution to those who have surrendered between 13 January 2000 and the 28 February 2007 (Article 4 of the Decree). Moreover, the list of three excludable offences in Law no 06-01 represents a retreat from the list of excludable offences under the Civil Harmony Law, which included the commission of, or participation in, "crimes that led to the death of a person or a permanent injury" (Article 3). Thus, the perpetrators of one or more individual murders, or acts of torture causing permanent injury, would be ineligible for amnesty under the Civil Harmony Law but apparently eligible under Law 06-01 of 27 February 2006.

Amnesty International has further concerns about the 2006 amnesty measures.

Firstly, the list of excludable offences under Law 06-01 of 27 February 2006, no matter how appropriate, does not extend to other grave crimes, suggesting that armed group members who murdered one or more persons will go free as long as the killings were not collective in nature.

Secondly, the authorities have not provided information showing that those responsible for "acts of collective massacres, rape, or the use of explosives in public places" have been effectively excluded from amnesty measures and prosecuted. There is no publicly available official information on the exact names, numbers and offences of those who have benefited from immunity under Law 06-01 of 27 February 2007. According to press reports quoting official statements, some 2,200 people who had been charged with or convicted of involvement in terrorist activities were freed from detention in March 2006 and in the following months.[12] The names of those released were not published, nor the nature of the crimes of which they were accused. Proposals to pardon or reduce the sentences of convicted prisoners must respect the principle that those convicted of serious human rights abuses should receive punishments that are proportional to the crimes they committed. Law 06-01 of 27 February 2006 provides no such guarantees. It proposes to pardon persons who were convicted for "supporting terrorism" or for committing acts of violence other than "collective massacres, rape, and bomb attacks on public places."

Amnesty International received information about the release of several people charged with involvement in international terrorism, although they were not entitled to under the terms of the amnesty laws. Some of them were later rearrested and detained. Other detainees who would have been eligible for release were apparently kept in detention. This suggests

[11] For more information, see *Algeria: Steps towards change or empty promises?*, Amnesty International (AI index: MDE 28/005/2003, September 2003)

[12] An article from a French newspaper states that 2,629 detainees were released from Algerian prisons between March and September 2006. The article says that the names and numbers of those who have benefited from amnesty measures were given by the Algerian authorities to the French intelligence services (see *Alger fournit à Paris sa liste noire du terrorisme,* Le Figaro, 16 January 2007.)

arbitrariness in the application of Law 06-01 of 27 February 2006 and gives little confidence that thorough investigations were conducted by the judicial authorities prior to deciding eligibility for amnesty. According to official statements, up to 300 members of armed groups surrendered to the authorities within the six-months prescribed by the Law. The authorities have not said whether all those who surrendered benefited from amnesty or whether some were referred to the judiciary for prosecution.

Case: Mourad Ikhlef, and Algerian refugee in Canada, was arrested in 2001 in Montreal and forcibly returned from Canada to Algeria in 2003, on account of alleged links with another Algerian convicted of terrorist-related activities. Mourad Ikhlef had been sentenced in absentia to life imprisonment in Algeria in 1993 for "membership of a terrorist group operating in Algeria and abroad". Upon arrival in Algiers, he was detained by the Department for Information and Security and reportedly put under duress. He faced three separate trials: in the first one he was retried for his 1993 absentia sentence and acquitted; in a second one, he was sentenced in 2005 on charges of "membership of a terrorist group operating abroad aiming to harm the interests of Algeria", apparently solely on the basis of statements he had made while under custody of the DRS. A further trial is pending. On 26 March 2006 he was released and told that all judicial proceedings against him would be stopped in the context of "national reconciliation" measures. He was re-arrested a week later. On 9 April, the Minister of Justice Tayeb Belaiz was quoted as saying in the press that Mourad Ikhlef should not have benefited from "national reconciliation" measures because of his alleged involvement in planning attacks with explosives.

However, Malik Medjnoun, who was arrested on 28 September 1999 and charged in 2000 with participating in the killing of singer Lounes Matoub in 1998, has not benefited from the amnesty measure under Law 06-01of 27 February 2006, even though his case seems to fit the conditions for eligibility for amnesty. He is still awaiting trial, eight years after his arrest (see Article 9).

Thirdly, Article 47 of Law 06-01 empowers the Algerian President, "*by virtue of the mandate given to him by the 29 September 2005 referendum*", to "*at any time, take all other measures necessary for putting into effect the Charter for Peace and National Reconciliation*.", therefore opening the way to future measures to grant impunity to perpetrators of human rights abuses. Actually, some official statements have suggested that amnesty provisions may be extended to those surrendering after the six-month deadline prescribed by the 2006 Decree.

To date, the Algerian authorities have not taken the necessary steps to convince victims of human rights abuses by armed groups and their families that serious efforts are being made to establish the truth and to identify those responsible for the crimes and bring them to justice. The authorities have largely failed to thoroughly investigate and uncover the truth about the killings, abductions, rape and torture of thousands of civilians. Serious questions raised about the failure of the state to protect the civilian population, particularly at the time of the large-scale killings of 1997 and 1998, have still not been answered. Even though there have been trials of thousands of individuals charged with and convicted of vague and generalized accusations of "terrorism" (often on the basis of confessions allegedly extracted under torture), these have done little to give confidence in the justice system to uncover the truth about

abuses committed and to establish a final determination of guilt. Even in cases where the authorities claim they have conducted investigations, there has been a lack of transparency about the procedures and an unwillingness to provide the families of the victims with the details of the investigation and to make the findings public. Victims of abuses by armed groups have had no guarantees that perpetrators of human rights abuses have been brought to justice.

In 2005, the U.N. Commission on Human Rights passed a resolution entitled, "The Right to the Truth." It stresses "*the imperative for society as a whole to recognize the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their families, within the framework of each State's domestic legal system, to know the truth regarding such violations, including the identity of the perpetrators and the causes, facts and circumstances in which such violations took place.*" The resolution goes on recognize "*the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights*." (U.N.C.H.R. Resolution 2005/66, adopted April 20, 2005)

The U.N.'s Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity states, "*Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations." The Principles also state, "Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate*."

Under Executive decree no 99-47 of 13 February 1999, persons who have suffered bodily harm or material damage following acts of terrorism are entitled to compensation. Funds have been allocated by the authorities to the relatives of persons assassinated by armed groups. These funds have in many cases been distributed to the families concerned, although some have complained that they never received the money which had been pledged.

Amnesty International welcomes measures taken by the authorities to compensate victims of human rights abuses by armed groups, but it is concerned that such measures do not constitute adequate reparation for the harm they have suffered. The Basic Principles and Guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law[13] provide that full reparation should include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

[13] Resolution adopted by the UN General Assembly on 21 March 2006 (A/Res/60/147)

Victims of sexual violence at the hands of armed groups

There is one specific category of victims of human rights abuses by armed groups whose right to an effective remedy is seriously undermined: these are the hundreds of women who have been raped by members of armed groups. Some women were mutilated and killed after being raped, others were forced to stay with their abductors and forced to cook and clean for them. Some were able to escape, others were left behind by armed groups after being raped. Many suffer today the physical and mental trauma generated by such experience. Women victims of rape run the risk of becoming pregnant, contracting sexually transmitted diseases, and developing gynaecological problems. Women who have been subjected to sexual violence suffer moreover from the social stigma attached to rape and the possibility of being rejected by their husbands, relatives or community. As a result they rarely make official complaints or even prefer to keep their ordeal secret. Therefore, the extent to which sexual violence has been committed during the internal conflict in Algeria is not known.

The Algerian authorities have recognised that rape occurred during the internal conflict. Amnesty International welcomes the fact that the amnesty measures taken in 1999 and in 2006 exclude from amnesty members of armed groups responsible for rape. However, to Amnesty International's knowledge, there has hardly been any prosecution of members of armed groups on charges of rape. Given the lack of information surrounding the application of the 2006 Decree, it is not known how many persons have been excluded from amnesty measures on account of committing a rape, nor how many of those who have surrendered may have been brought to trial and prosecuted for rape.

The problem of unwanted pregnancies as a result of rape has received some attention in Algeria, in particular the issue of whether women pregnant as a result of rape could be allowed to abort. Seeking, undertaking and performing abortions are criminalized under articles 304 and 309 of the Algerian Penal Code.[14] Abortion is legally allowed in case the mother's life is threatened or her physiological and mental balance is gravely threatened, under article 308 of the Penal Code and article 72 of a 1985 law on the promotion and protection of health.[15] In 1998, the High Islamic Council, a state institution, in response to such question, ruled in a fatwa (case law) that women who had been raped could, in extreme cases where their life was under serious threat and this had been medically established, have access to abortion. The ruling also affirmed that women who had been raped had not lost their honour and that they should not be blamed or punished for having been raped. The Ministry of Health reportedly issued instructions in 1998 to allow abortion for women pregnant as a result of rape by armed groups under certain conditions. Amnesty International has not been able to obtain a copy of these instructions. Women's organisations members of the *Wassila* Network in Algeria, however, have denounced the lack of implementation of legal and religious provisions allowing abortion for survivors of rape by armed groups. There is no official information as to how many women may have benefited from such measures, however restrictive they are. [Amnesty International considers that all women pregnant as a

[14] Both women seeking abortion and providers of abortion services are criminalized.
[15] Law No.85-05, adopted on 16/12/1985.

result of rape should have access to safe and legal abortion services, and be in possession of all the information necessary so as to be able to make a decision.]

Women's organizations have also complained that victims of rape by members of armed groups do not benefit from rehabilitation provided by the government, including medical, psychological and other post-traumatic counselling, nor from compensation which other victims of armed groups have been able to receive. Measures of compensation adopted in favour of the "victims of terrorism" do not specifically mention survivors of rape, nor do they contain specific provisions to support their particular needs and rehabilitation. Non-governmental organizations offer medical and psychological assistance to a limited number of individuals, but do not have adequate resources to provide it to the hundreds of women and girls who need help. The lack of such provisions is especially worrying in a society such as Algeria's, where victims of rape are forced to deal not only with the trauma caused by the crime, but also with the social taboos, shame and stigma attached to this sensitive issue. Many of the women who have been victims of abduction and rape by armed groups live in rural and socially conservative areas of the country, compounding the problem. Others, who have been rejected by their families or have left their homes for fear of stigmatisation, are homeless and jobless, in a society where the employment of women remains difficult.

No effective remedy for victims of human rights violations by state agents

During the period under review in this briefing, state security forces and state-armed militia have enjoyed an almost complete *de facto* impunity for human rights violations they have perpetrated during the conflict. If the 2005 Charter for Peace and National Reconciliation acknowledged the responsibility of armed groups in gross human rights abuses, it denied any responsibility of state security forces for the human rights crisis that has affected Algeria. Law 06-01 of 27 February 2006 implementing the Charter provides sweeping impunity for state agents for any of their actions, and for state armed militia.

Article 45 states:

"*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 and Popular Republic of Algeria. The competent judicial authorities are to summarily dismiss all accusations or complaints.*"

Article 44 states*:*

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

This article, coupled with Article 45 quoted above, suggests that state-armed militia, believed to have also committed grave and widespread human rights violations, are also exempt from any prosecution.

Article 45 of the law explicitly contravenes Article 2 of the ICCPR, under which "*any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity*". It bars victims and their relatives from seeking justice in Algeria and obtaining judicial remedies and prevents the truth about human rights abuses from emerging through Algerian courts.

Moreover, Article 46 states:

"Anyone who, by speech, writing, or any other act, uses or exploits the wounds of the National Tragedy to harm the institutions of the Democratic and Popular Republic of Algeria, to weaken the state, or to undermine the good reputation of its agents who honorably served it, or to tarnish the image of Algeria internationally, shall be punished by three to five years in prison and a fine of 250,000 to 500,000 dinars."

This article muzzles free speech and represents an additional impediment to the right to redress of victims of human rights violations by state agents.

The law, however, introduces compensation measures for families of "persons implicated in terrorism" - that is, families of members of armed groups who have been killed (presumably by state agents) and who have no resources. These families can claim compensation on presentation of a certificate by the judicial police confirming that their relatives died while in the ranks of armed groups and of a certificate by the *wali* of the province where they reside confirming that they have little or no resources. Amnesty International is concerned that certificates to confirm the death of an armed group member may be established without a proper investigation into the circumstances of the killing (which could have been an unlawful killing or an extrajudicial execution)[16]. According to recent official statements, out of 16,648 claims for compensation already retained by the authorities, 10,200 were made by socially deprived families who had a relative "implicated in terrorism". Out of these 10,200 claims, 5317 are said to be under process and 2757 settled. Official statements have also mentioned that the list of those "implicated in terrorism" reaches 17,000.

Law 06-01 of 27 February 2007 also introduces measures of compensation for victims of "disappearances". Enforced disappearances, numbering into the thousands, were one of the grimmest features of the internal conflict in Algeria. The failure of the Algerian authorities to provide an effective remedy for relatives of the "disappeared" during the period under review is summarised below.

Enforced disappearances

The U.N. Declaration on the Protection of all Persons from Enforced Disappearance states:

"*The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation.*" (U.N. General

[16] See Article 6, right to life, below.

Assembly resolution 47/133 of 18 December 1992, Article 19). On 6 February 2007, Algeria signed the new International Convention for the Protection of All Persons from Enforced Disappearance.

The ongoing pain and suffering of relatives who are unable to get information from state authorities on the status of their relatives, or any investigation into their "disappearance" flies against a growing body of international law which views "a disappearance" as a "continuing offence," so long as the whereabouts of the missing person have not been clarified.

The U.N. Declaration on the Protection of all Persons from Enforced Disappearances takes a more affirmative view of state responsibility when "disappearances" are carried out by its agents. Article 5 states, "*In addition to such criminal penalties as are applicable, enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable under civil law, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law.*" (U.N. General Assembly resolution 47/133 of 18 December 1992)

In its observations and recommendations of 1998 to Algeria, the Human Rights Committee urged the state party to establish a central register recording all reported cases of "disappearances" and all actions taken to trace them, and to assist the families to retrace their "disappeared" relatives. To date, Amnesty International is not aware of a case of "disappearance" that has been clarified in a satisfactory manner by the Algerian authorities. There is no publicly available list of victims of enforced disappearance, and too often the actions of the state party in relation to "disappearances" have seemed to obstruct the efforts of the families to retrace their loved ones and to deny them the right to an effective remedy. Moreover, the Algerian authorities have consistently denied state involvement in enforced disappearances.

Since then, in contrast with previous years, the authorities have seemed to give some form of recognition to the problem of enforced disappearances and have taken steps with the stated aim to solve the question. However, these steps have had little effect in practice. As long as full, transparent and impartial investigations into cases of "disappearance" are not conducted, the truth about the fate of thousands of "disappeared" will not emerge and their relatives will continue to suffer anguish.

In August 1998 the Ministry of Interior announced that offices would be opened in each of the country's forty-eight *wilayas* (provinces) to receive complaints about "disappearances." Many families of the "disappeared" were doubtful as to this initiative, because it was led by the Ministry of Interior, who supervised the security forces they suspected were responsible for the enforced disappearance of their loved ones. The powers of investigation of these offices were not made public. In 2001, Minister of Interior Yazid Zerhouni told the parliament that in the previous three years, these offices had reviewed some 4880 cases of persons declared missing. He said that among these cases there were persons sought by the authorities on account of crimes, persons killed in clashes with the security forces and persons killed by armed groups, persons currently serving prison sentences and persons released. No list containing the names of the 4880 cases or information found about them was ever published.

In 2001, a new official human rights body, the CNCPPDH, [17] was established and received families of the "disappeared" in its office in Algiers on a regular basis to listen to their concerns. CNCPPDH President Farouk Ksentini stated that he was in favour of the establishment of a national commission of inquiry to establish the truth about each of the "disappearance" cases, a measure that Amnesty International had long been calling for. In September 2003 the Algerian authorities established a commission on "disappearances" to serve as an interface between the Algerian authorities and families of the "disappeared". The commission did not have an official title, but is commonly referred to as the ad hoc mechanism (*mécanisme ad hoc*). The mechanism was set up for a duration of 18 months under the CNCPPDH. It was composed of members of the human rights body and was headed by CNCPPDH President Farouk Ksentini. The mechanism was mandated to collect information about "disappearance" cases, to facilitate communication between the families of the "disappeared" and the authorities and to elaborate proposals to solve the problem of "disappearances" in Algeria.

The mechanism lacked the necessary investigative powers and mandate to work towards full, independent and impartial investigations into enforced disappearance. In particular, it did not have power to access information available in the archives of the security forces or ensure that it was preserved. It had no mandate to refer credible information pointing to the responsibility of individuals for “disappearances” to the relevant authorities or the judiciary.

At the end of March 2005 its mandate expired. The head of the commission publicly excluded criminal prosecution of those responsible for the “disappearances” and proposed compensation payments to the families, many of whom continued to endure economic hardship. The commission remained silent on the state’s duty to investigate serious human rights violations and to guarantee the victims’ right to an effective remedy. The head of the commission told Amnesty International that, on the basis of complaints which families had made to the authorities, it had concluded that 6146 individuals became missing between 1992 and 1998. The commission’s confidential report to the President has yet to be made public, more than two years after it was submitted.

The families of those forcibly “disappeared” have taken many steps to find out their fate. Many have contacted the police, gendarmerie and other security forces to try and obtain information as to where their relative would be detained and why. Many have presented their case to the judicial authorities, demanding that investigations be opened into the enforced disappearance of their loved ones or filing complaints to the courts on the grounds of arbitrary detentions. However, the justice system has largely failed to provide satisfactory answers to these families. Either families have received no response from the courts since their complaint was made, or there has been no progress in investigations, or complaints were closed on the grounds of lack of information or evidence. Families of the “disappeared” have reported that

[17] the Commission nationale consultative de promotion et de protection des droits de l’homme (CNCPPDH), the National Consultative Commission for the Promotion and Protection of Human Rights was established by presidential decree in March 2001 to replace the Observatoire National des Droits de l’Homme (ONDH), National Observatory for Human Rights. The CNCPPDH has no investigative powers and is mandated to act only in an advisory role to the President.

those in charge of the investigation rarely summoned eyewitnesses to the arrest of their loved ones, and seemed not to consider information which could have helped trace their loved ones.

Some families have also received information, apparently obtained from the security forces, through the judicial authorities or the official human rights body, that their loved ones were killed while in the ranks of armed groups, or escaped from custody, but without any adequate explanation as to how a person known to have been in the custody of state agents could then enter the ranks of an armed group or providing details of the supposed escape. Sometimes families have received contradictory information from different government authorities, with discrepancies, for example, in the dates of arrest or detention provided.

Law 06-01 Implementing the National Charter on Peace and Reconciliation now explicitly prevent investigations into the conduct of the security forces and is a new, major impediment to the search for truth and justice of relatives of the “disappeared”. It proposes, however, measures to support families of "disappeared" persons, many of whom suffer the harsh social and economic consequences of the absence of a loved one, by providing financial compensation.

Compensation payments are conditional on families obtaining an act certifying that their relative is missing from the judicial police, established “after searches for their whereabouts have been inconclusive”. They can then obtain a death certificate through an administrative ruling (according to Article 30 of the law, every person who has been missing and whose body has not been found after investigations through all legal means is declared dead). The administrative ruling of death should happen within two months of the demand of the families. The act certifying that the person is missing and the death certificate must be presented to the authorities by the families lodging a claim for compensation. Many families have declared that they would not seek a death certificate, fearing that this would close the door to proper investigations into the fate of their loved ones and prevent them from obtaining the truth.

According to Presidential Decree 06-93 of 28 February 2006 relating to the compensation of victims of the national tragedy, the approval of compensation claims is to be done by: the Defence Ministry, for the “disappeared” who were members of the military or civil services under the authority of the Defence Ministry; the relevant civil service, for the “disappeared” who were civil servants; the director of National Security, for the “disappeared” who were members of this force; and the *wali* (prefect) of the *wilaya* (province) where the relatives reside (Article 8).

Law 06-01 of 27 February 2006 also imposes a time limit of one year from its date of adoption for families to obtain a certificate attesting that their relative is missing, followed by a six-months limit to lodge a claim for compensation. There are no provisions regarding cases of relatives who would not have obtained, for one reason or other, a certificate that their relative is missing within the one year time limit, which presumably means that these relatives will not be entitled to compensation. The law does not acknowledge state responsibility for the “disappearances” or the rights of the relatives of the “disappeared”, but rather only speaks of the right to compensation of relatives as outlined.

Presidential Decree 06-93 of 28 February 2006 relating to the compensation of victims of the national tragedy provides that the amount of compensation is 120 times 16,000 dinars (about 28,000 USD in total) to be divided between family members (Article 43). The amount lessens to 120 times 10,000 dinars if the "disappeared" was a minor or was over 60 and did not have retirement plans (Articles 45 and 46). The Decree provides no details as to how the amount of compensation is proportional to the gravity of the violation and the harm suffered. The Decree does not provide for measures of psychological help or rehabilitation for families of the "disappeared". Moreover, it details the proportion of the compensation that goes to each relative of the "disappeared", but seems to exclude children over 19 and over 21 if they study[18], presumably on considerations that they are financially autonomous. Such exclusions seem to run contrary to the right of *every* person to an effective remedy and should be clarified by the state party.

Although the Algerian media have reported that compensation funds have started to be distributed during 2007, there is no publicly available information on the number of families who have so far benefited from compensation. The head of the legal committee in charge of implementing the 2006 Decree said that, regarding the issue of "disappearances," there are two lists: one which contains 6145 "disappeared," and the other one which contains 17.000 "terrorists" killed. Given that some relatives of the "disappeared" have sometimes been told by the authorities that their loved ones were killed in clashes between the security forces and armed groups, or by armed groups, this adds further confusion as to who the authorities attach the responsibility for "disappearances".

In 2006, the Human Rights Committee, in its first ruling on two cases of enforced disappearance in Algeria, stated that the Algerian authorities had failed to protect the life and security of Salah Saker and Riad Boucherf. Salah Saker, a teacher and member of the Salvation Islamic Front, banned in 1992, "disappeared" after his arrest by members of the security forces on 29 May 1994. Riad Boucherf "disappeared" in 1995. Their relatives had been trying to obtain information about their fate for many years and filed complaints to the Algerian courts, which had made no progress. The Algerian authorities have yet to investigate independently and thoroughly the two cases, despite the recommendations of the Human Rights Committee. Since the ruling of the Human Rights Committee, Salah Saker's wife only received a document certifying that her husband was missing, a prerequisite for being considered for compensation measures.

Article 3: equal rights of women and men

According to Article 3 of the ICCPR, women and men have equal rights to enjoy the civil and political rights enshrined in the ICCPR.

Legal discrimination against women

Despite Article 29 of the Algerian Constitution guaranteeing equality between men and women, legal discrimination between men and women has been entrenched in other

[18] Decree no. 06-93, 28 February 2006, article 9

legislation, particularly the Family Code. Amendments to the Family Code and Nationality Code in 2005 made some important improvements but failed to address fully discrimination against women under the law. As a result of the amendments to the Nationality Code, Algerian women married to non-nationals can now confer nationality to their children. However, the Family code still discriminates against women in matters of marriage, divorce, child custody and guardianship, and inheritance, despite the 2005 amendments.

Marriage

The age of marriage is now set at 19 for both parties (Article 7 of the Family Code); however a judge can dispense with the minimum age for reasons of interest or necessity, if the capacity of both parties to conclude a marriage is established. Further specific articles allow for the conclusion of marriages of minors, provided there is a marriage tutor present.

Article 39 of the Family Code of 1984, which made it a legal duty for Algerian women to obey their husbands, and respect and serve them, their parents, and relatives, was repealed. The same article made it a legal duty for women to breastfeed their children and care for them until adulthood, and set out separate duties for men and women in marriage – this was abolished in favour of an equal set of duties for both spouses.

Article 37 of the 1984 Family Code was substantially amended. It now states that each spouse maintains their own property when entering into the marriage, and that either the marriage contract or other agreement can divide the property acquired during the marriage, as the spouses see fit. This provision, however, does little to protect women's right to property acquired during marriage in case of dissolution of the marriage and disagreement between spouses over such property. The ability to contract a marriage on the basis of mutually agreed upon clauses does afford women some protection, provided that there is sufficient knowledge of the legal effect and control over the text of the contract.

According to Article 19 of the amended Family Code the two spouses can stipulate any clause in their marriage contract, in particular those concerning polygamy and the work of the wife, as long as the conditions are not contrary to the dispositions of the present law.

Article 30 prohibits marriage between a Muslim female and a non-Muslim male "*temporarily*". It does not provide details as to how or when this condition can be lifted. Muslim men may marry non-Muslim women. Article 30 thus maintains discrimination between men and women, as well as religious discrimination.

Maintaining polygamy

Article 8 has been modified to include further restrictions on polygamy, but the right of a man to marry more than one woman is maintained in the Family Code. Contracting a marriage with another wife requires "just motive" – a term not defined in the Family Code - and equal conditions and intention in the treatment of the wives. The current and future spouse must be informed, and a request for authorisation must be made to the president of the tribunal where the couple reside. The president of the tribunal may authorise the new marriage, if he or she concludes that the spouses consent, and that the husband has proved his just motive and his

ability to offer equality and necessary conditions for conjugal/married life. The amended Family Code does not provide information with regards to the implementation of such conditions by judges. Maintaining the right of men to a polygamous marriage is highly symbolic, as polygamy is not practiced on a large-scale in Algeria.

Maintaining a matrimonial tutor

While the amendments to the Family Code do alter the system of the matrimonial tutor, it still remains the case that women need a *wali* (matrimonial guardian or tutor) to be present at their marriage. Article 11 of the Family Code provides that a woman of legal age should conclude her marriage contract in the presence of her *wali* , who can be her father or a male relative or any other person of her choice. The amendment seems only to allow a woman to freely choose the tutor, while still reinforcing the discriminatory requirement of having a tutor present in order to contract a marriage. However, a minor can only contract a marriage by way of a 'wali', who is the father or a relative. Art. 13 specifies that a *wali*, whether it is the father or another person, cannot force a minor under their guardianship into a marriage contract without their consent.

Child custody and guardianship

Under the 1984 Family Code, the mother could not become the carer of her children until adulthood unless their father agreed to it. The mother could never become the tutor of her children, and the father's consent and permission were needed for the most basic needs of the child, including registering him or her at school, and even approving the child's participation in school activities.

Article 87 establishes that the education or tutorship of children is the father's responsibility. A mother is allowed to make decisions in case of an emergency, or in the case of the father's absence or other indisposition, but without needing to seek judicial authorization as the 1984 Family Code required. In the case of a divorce, Article 87 now grants a judge the right to give the right of tutorship to the children's guardian, which should give women with custody over their children the right to make decisions regarding their education.

Art. 64 states that in the case of divorce custody of children would fall in order of priority to the mother, followed by the father, then the maternal grandmother, followed by the paternal grandmother, and so on, all with a view to ensure the best interests of the child. This is a major improvement to the 1984 Family Code. Custody of children is defined in article 62 of the Family Code as the education of children in the religion of their father, seemingly without consideration of the religion or the wishes of the mother. The ability of the mother to have equal input into major life and educational decisions of her children is undermined in Article 62.

However, Article 66 of the Family Code, which was maintained under the 2005 amendments, provides that in case the mother remarries, she loses the custody of her children.

Unequal rights on dissolution of marriage

Amendments to the Family Code grant women more grounds to demand a divorce. Although the amendments reduce discrimination between men and women in that matter, they still maintain legal discrimination.

A husband can freely divorce his wife without justification, but a wife must meet specific conditions in order to initiate a divorce, as set out in Articles 53 and 54 of the Code. Article 53 now allows two more grounds for a divorce by a woman: disagreement between the spouses and violation of the clauses of the marriage contract.

A woman has to disclose the reasons for her divorce on unequal terms, implicating her rights to privacy as well as dignity. The grounds for divorce include non-payment of maintenance, defects which prevent the realisation of marriage, the refusal of the husband to share the matrimonial bed for more than four months and absence of the husband fore more than one year without proper justification. Article 54 specifies that a woman may obtain a divorce without the consent of her husband by paying a financial reparation (*khol'a),* which the judge can estimate on the basis of her estimated dowry at the time of judgement. Men are not obliged to pay financial reparation in case they request a divorce.

Article 57 makes clear that a judgement of divorce is final, and cannot be appealed except in its division of property, and since the 2005 amendments, its guardianship arrangements. Article 57 bis adds that a judge can order provisional measures for maintenance, guardianship, visit or living arrangements.

Obligation on father to ensure suitable home for children

In the event of a marriage breakdown, the custody of children will remain with the mother, and the father has an obligation to furnish them with decent lodging (Art. 72 of the amended Family Code). Article 72 also establishes that in case of divorce, where the wife has been granted custody, she is to be maintained in the marital home, until the execution of any judicial decision dealing with housing. This is a major improvement to the 1984 Family Code which provided that the marital home belonged to the husband in case of divorce. This may serve to reduce the number of divorced or repudiated women who are forced to live in the streets with their children in Algeria. However, there are no rights to the matrimonial home for a woman if the marriage did not result in children.

Unequal Access to Inheritance

The unequal footing of men and women in the law of inheritance reinforces the systematic discrimination women face in Algeria. Inheritance has been left untouched by the 2005 amendments to the Family Code, and thus remains weighted in favour of sons compared to daughters.

The effect of the law is to entrench a simple mathematic formula with severely discriminatory effect: one son is equal to two or more daughters.

Case

Women affected by human rights violations in the context of the internal conflict, in particular wives of the "disappeared" (the vast majority of whom are male), have been particularly affected by such legal discrimination. Their difficulties have been both administrative and economic and have resulted from the double discrimination against them as women on the one hand, and the lack of adequate legal provisions to address the problem of "disappearances" on the other.

Women do not have equal rights as guardians of their children, even with the improvements brought by the amendments to the Family Code in 2005. Therefore they encounter many administrative problems, such as in seeking the registration of their children to school, in the absence of their husband, unless they have obtained an administrative ruling declaring their husband as missing. As described earlier in this briefing, wives of those "disappeared" have often perceived this as a threat to their right to information and truth about their husband's "disappearance" and to their claim that their husband might still be alive. The wives of the "disappeared" have also encountered economic difficulties, as they have had to provide for themselves as well as their children in the absence of their husband. The "disappearance" of a son who was supporting a family with his salary may also worsen the economic situation of women in the family, in particular older women who are divorced or widowed and without an independent income.

One problem frequently encountered by women whose husbands have "disappeared" is that they have not been legally able to access pensions, savings, property, or other material belongings that are in their husband's name, unless they have obtained a death certificate. Although women are entitled to have bank accounts, in the vast majority of cases a family's account is held in the name of the husband. Similarly, property is likely to be formally registered in the husband's name. Where the wife of a "disappeared" person has obtained a declaration of absence, an inventory is drawn up of the missing person's material belongings and a trustee (*curateur*) designated to manage them. Even though the wife of a "disappeared" man may become a trustee for the property and belongings held in the name of her husband, she cannot use these to cover the family's living expenses after the "disappearance".

Article 115 of the Family Code stipulates that funds and other material belongings of a missing person cannot be accessed or divided for inheritance until the person's death, at which point they are distributed in accordance with the inheritance provisions of the Family Code, unless a lawfully drawn out will stipulates otherwise. Wives of the "disappeared" cannot access family assets until they complete the process leading to a death certificate. Similar problems are faced by women whose husbands have "disappeared" and who would be entitled to a pension if they were widows. Widows of men who were working in formal employment with social security provision are entitled to a pension after the death of their husbands.[19] However, wives of men who have "disappeared" are not able to claim such pensions, until a death certificate is issued, as stated in articles 109 to 115 of the Family Code.

[19] See Articles 30-42 of Law no. 83-12 of 2 July 1983, published in the Algerian official bulletin (*Journal Officiel*) of 5 July 1983.

Law 06-01 of 27 February 2006 Implementing the Charter for Peace and National Reconciliation specifies similar conditions in order to claim compensation. However, the Law specifies that no more than two months shall pass between the date when a certificate that a person is missing is issued and the date of the issuance of a death certificate. In the Family Code, this period is of four years.

As women, they have encountered difficulties seeking employment to provide for their family. Women are less likely than men to have received education or training that would facilitate their entry into the labour market, in a context of high unemployment in Algeria. Some wives of the "disappeared" have reportedly faced additional difficulties as a consequence of the social stigma attached to the "disappearance" of their husband. Many women who have become heads of household as a consequence of a "disappearance" have had to find informal ways of securing an income for themselves and their families, but this also means they have less employment protection than in formal employment.

Penalization of consensual sexual relations

The Penal Code contains a key discriminatory provision for the punishment of adultery. According to Article 339 of the Penal Code, adultery is a crime punishable by between one and two years' imprisonment. Penalties for adultery are the same for men and women except in the case of an unmarried person who did not know that the person they had sexual relations with was married. If this person is a woman she may be punished by the same penalty as a married person found guilty of adultery. Unmarried men in the same situation, however, may be punished only if they knew their partner was married.[20]

Violence against women

Women in Algeria are vulnerable to violence by actors other than armed groups. In such cases, the state party also has a duty to provide them with an effective remedy, including a judicial remedy and adequate rehabilitation and protection.

In July 2001, a group of women living and working in Hassi Messaoud, an oil-rich region in southern Algeria were attacked by some 300 men. The attack was reportedly spawned by rumours that the women were prostitutes. The majority of the women attacked were subjected to sexual assaults, some were raped and three gang-raped. Some women were stabbed with knives on their face or body, others were burned. Their rooms were ransacked and looted. Similar attacks reportedly occurred in the town of Tebessa, in the same month. The attack received some publicity in the Algerian press and judicial proceedings were opened. However, only a few women testified at the trial. The others were too scared. In the end, only one man was sentenced to eight years for rape. No one was prosecuted for other sexual assaults. The

[20] The relevant provisions of Article 339 read: *Est punie d'un emprisonnement d'un à deux ans toute femme mariée convaincue d'adultère. Quiconque consomme l'adultère avec une femme la sachant mariée est puni de la même peine. Est puni d'un emprisonnement d'un à deux ans, tout homme marié convaincu d'adultère; la femme coauteur est punie de la même peine, sans préjudice des dispositions de l'alinéa précédent.*

women who went to testify at the trial have complained that they have not received proper protection after testifying at the trial and say they are still scared that the men or their families may seek revenge. Moreover, they still suffer the trauma of having been sexually assaulted, as well as the social and economic consequences of the taboo surrounding sexual assault.

Domestic violence is thought to be prevalent in Algeria. The government has acknowledged not only that violence in the family is increasingly a problem, but also the absence of specific legislation protecting women from violence and of statistics on the prevalence of the problem. A major study on violence against women in Algeria was conducted between December 2002 and June 2003 by the National Institute for Public Health (Institut National de Santé Publique, INSP) and published in 2005,[21] with the collaboration of health, justice, security and social professionals and intergovernmental and national non-governmental organizations working on violence against women. According to the study, domestic violence, in particular acts of violence by a husband against his wife represented the majority of cases of violence against women in the country. The study made important recommendations, including on the training of state officials and personnel coming into contact with domestic violence, on the creation and reinforcement of centres to shelter victims of domestic violence, on national information and prevention measures, and on the need for legal reforms.

Laws on violence against women

Article 336 of the Penal Code makes rape a crime punishable by five to 10 years' imprisonment but does not define rape. Other forms of sexual violence are not defined under the Penal Code, although they could be considered under indecent assaults ("*attentat àla pudeur*") codified in Articles 334 and 335. Medical evidence is crucial to prove rape in a court of law, and women subjected to rape should be examined by a forensic doctor, according to the law. The Algerian authorities say that evidence given by medical doctors other than forensic may be considered too in practice. Other evidence to support an accusation of rape can be provided by witnesses, although this is unlikely to happen in most cases.

There are no specific legal provisions about domestic violence, although now women can divorce their husband if they are violent towards them (see the Family Code). There is no explicit legal provision regarding marital rape. Article 264 of the Penal Code provides penalties for violent acts against another person which lead to illness or inability to work for more than 15 days. There are less severe penalties in case the threshold of 15 days' inability to work is not met. Women need a medical certificate by a forensic doctor to prove this in court. Article 267 allows for more severe penalties when a person commits violent acts against his or her parents. Article 272 also allows for more severe penalties when a parent or a guardian commits violent acts against a child for whom he or she has responsibility. Article 337 makes incest a crime.

Many women are unaware of legal provisions that could give them some form of redress and protection in case of violence. Women must first make a complaint to the judicial authorities in order to benefit from legal aid and legal protection.

[21] Available at : http://www.ands.dz/insp/INSP_Rapport_Violence_Femmes.pdf

As said in the case of women victims of sexual violence in the context of the internal conflict, abortion is considered as a crime under the Algerian Penal Code. Although abortion can be sought if a pregnancy threatens the life of a woman, there are no specific provisions for abortion in case of a pregnancy resulting from rape, apart from rape committed by armed groups. Although there are no definitive studies in the matter, it is thought that a number of women in Algeria have recourse to abortion services illegally.

In order to improve the protection of women from domestic violence in Algeria, there needs to be, on top of legal reforms that explicitly make all forms of violence against women criminal offences, serious programmes to raise awareness and train professionals who may come into contact with women suffering from violence. These include state officials, law enforcement agencies and judicial institutions, as well as the medical profession. Programmes to provide psychological help to women suffering from domestic violence need to be created. Non-governmental organisations, such as *SOS Femmes en Détresse* in Algiers, provide shelter for women fleeing violence in their home, but these are not enough to support all the women in need of a place to stay when they escape violence.

Article 4: state of emergency

Article 4 sets out the criteria under which a state party can declare a state of emergency. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 of the ICCPR may be made under a state of emergency. State Parties shall immediately inform the other States parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations (UN), of the provisions from which it has derogated and of the reasons by which it was actuated.

After the *Front Islamique du Salut* (Islamic Salvation Front), FIS, obtained the majority of seats in the first round of the first multi-party legislative elections in December 1991, the Algerian authorities imposed a state of emergency in February 1992 for one year. The state of emergency was extended indefinitely in February 2003, in breach of the Algerian Constitution, which states in Article 92 that the organization of the state of emergency and the sate of siege is to be defined by an organic law. The state of emergency is still in place today, even though the authorities have affirmed in recent years that the security situation has markedly improved and that the threat posed by armed groups is now under control. When the Algerian authorities declared a state of emergency, they notified the UN Secretary-General but gave no information as to the provisions from which they were derogating.

Under the framework of the state of emergency, the authorities also adopted specific emergency laws, which were incorporated virtually in their entirety into the Penal Code and the Criminal Procedure Code in 1995. These measures have increased the scope of the death penalty, lowered the age of criminal responsibility to 16 years, extended the period of pre-arraignment detention from two to 12 days. Also, a broad and vague definition of "terrorist" or "subversive" activities was enacted in the Penal Code and other measures extended offences threatening state security to include reproducing or distributing "subversive literature, "justifying terrorism by whatever means, or "being active in any terrorist or subversive association, group or organization abroad".

While adopted to respond to a specific crisis situation, these extraordinary emergency measures have now become entrenched in ordinary law. The requirements of proportionality, strict necessity and limited duration of emergency measures appear to have been disregarded in incorporating these measures into the Algerian Penal Code and Criminal Procedure Code.

Some of these emergency measures violate international standards and have directly contributed to violations of the rights enshrined in Articles 6, 7 and 15 of the ICCPR, even though these rights are non derogable, even under a state of emergency . Although the level of human rights abuses has decreased in Algeria compared to the 1990s, it is in the context of counter-terrorism measures that serious human rights violations continue to be reported today. A significant example is the time limit of 12 days during which suspects of "acts of terrorism or subversion" can be held without charge or legal counsel (*garde à vue*).

According to Algerian law, DRS personnel can exercise the role of judicial police, a function usually exercised by police and gendarmerie. Officers of the judicial police have 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. This time limit already contravenes Article 9 of the ICCPR. The lack of access to legal counsel during this time limit also facilitates violations of Article 7 of the ICCPR, as it takes away a key safeguard for the protection of every detainee against acts of torture.

Even the legal safeguards protecting detainees, such as their right to communicate immediately with their family and receive visits from them, and to be examined by a doctor of their choice at the end of the period of *garde à vue* have usually been ignored in practice by the security forces. This practice has generated a widespread pattern of secret and unacknowledged detentions, during and beyond the 12 days period of *garde à vue*, which has facilitated the torture and enforced disappearance of thousands.

The judicial police operates under the authority of the public prosecutor. However, DRS personnel appear to 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*. Therefore, 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 arbitrary detention.

Article 6: right to life

Article 6 guarantees that everyone has the inherent right to life.

Killings in the context of the conflict

Up to 200,000 people have been killed in the context of the internal conflict in Algeria, according to official statements in 2006. Many were civilians, although some were members

of armed groups and others members of the security forces. All parties to the internal conflict, including armed groups, state security forces and state-armed militia have been responsible for killings. Many people lost their lives in violation of Article 6, with thousands massacred, "disappeared", dead following torture, extra-judicially executed and deliberately and arbitrarily killed. There is no doubt that massive violations of the right to life have taken place in Algeria and that the Algerian authorities have largely failed to protect life and security.

Although there are far less killings than during the height of the internal conflict, killings still occur in Algeria today (see Introduction). Some killings are committed by armed groups during attacks targeting the military but also civilians. Suspected active members of armed groups continue to be killed during operations by the security forces, generally in areas of reported armed group activities. There is little information and invariably no investigation into the circumstances in which armed groups members are killed. The rarity of arrests of armed group members during such security operations suggests that insufficient efforts may be made to spare their lives, and that extra-judicial executions may be committed by the security forces. Moreover, civilians have also been killed during such security operations, and there are concerns that some of these killings were unlawful. The lack of thorough investigation alongside the amnesty measures discussed above, further entrenches a culture of impunity in Algeria.

Other unlawful killings

Other unlawful killings have also occurred outside of the context of the internal conflict. In 2001, a series of anti-government protests in Kabylia, sparked by the shooting on 18 April 2001 of a 19-year-old secondary school student, Massinissa Guermah, by a gendarme inside a gendarmerie station in the town of Béni Douala[22], was repressed in a heavy-handed way by the security forces. Dozens of unarmed protesters were shot dead by law enforcement agents and many more were injured. On 2 May 2001 President Abdelaziz Bouteflika mandated a prominent jurist, Mohand Issad, to head a commission of inquiry into the killing of unarmed demonstrators. The commission of inquiry published a preliminary report in July 2001 which examined the circumstances of some 50 killings which occurred in Kabylia between 18 April and 11 June 2001. The report stated, among other things, that the gendarmerie intervened in the protests without being required do so by the civilian authorities; that other security forces may have intervened as well as the gendarmerie; that live bullets fired from Kalashnikov AK47 assault rifles were used; and that the violations committed by the security forces could not be explained by deficiencies in the training of their personnel and the impunity of those responsible could not be justified. In its final report, published in December 2001, the commission concluded that ambiguities in Algerian law meant that the military authorities were effectively able to give themselves authority to intervene in any situation involving the maintenance or restoration of public order; and that the liberty that certain state agents at all

[22] The student died in hospital from his wounds on 20 April 2001. For further information on these events, see *Algeria: Steps towards change or empty promises?* Amnesty International, AI index MDE 28/005/2003, September 2003

levels continued to act in ways that showed that "respect for the law has not yet entered the culture of Algeria's officials".

A year later the authorities issued Presidential decree no. 02-125 of 7 April 2002 providing for compensation of those injured and of the relatives of those killed in the demonstrations. They also announced that those responsible would be brought to justice. However, to Amnesty International's knowledge, only two named law enforcement agents have been prosecuted in connection with the killings in Kabylia since April 2001. One of the two was the gendarme who shot Massinissa Guermah on 18 April 2001, who was sentenced to two years' imprisonment on charges of involuntary manslaughter, involuntarily causing harm by firearms and disobeying orders. The other one was a policeman convicted of the murder of a man inside a café, at around the same time as the demonstrations. Meanwhile, many of the cases brought against the gendarmerie by relatives of those who killed in the demonstrations were dismissed for lack of evidence. The authorities have not made public information on further investigations and trials of law enforcement officials involved in the killings, and are not known to have taken steps to ensure that the security forces comply with international standards governing the conduct of law enforcement officials and the use of force and firearms. The authorities apparently have not followed up on the recommendations of the commission headed by Mohand Issad.

The death penalty

Algerian legislation retains the death penalty for a wide range of offences, including terrorism-related offences specified under Article 87 of the Penal Code, although a *de facto* moratorium on executions has been observed by the authorities since 1993. Algerian courts continue to impose the death penalty. Many death sentences are imposed *in absentia*, mainly against suspected members of armed groups active in the country or those suspected of involvement in international terrorism and living abroad.

The Algerian Penal Code specifies that the death penalty is applicable for a number of crimes and offences against the security of the state (Part 2, Book 3, Title 1, Chapter 1): treason (art.61-63), spying (art.64), attacks against the authority of the state and the integrity of its territory (art.77), raising armed troops without authorization of the legitimate authorities (art.80), taking control or maintain control over military command illegally (art.81), massacre or devastation (art.84), leading armed groups aiming at the disturbance of the state by committing crimes in articles 77 to 84, which involves attacks and plots and other infringements against the authority of the state and the integrity of its territory (art.86).

The Penal Code further specifies that certain crimes defined as terrorist acts in article 87bis are punishable by death where ordinary law provides life imprisonment (art.87bis1), for possession and preparation, import and export of explosives (art.87bis7). It also provides death penalty for use of firearms during insurrection (art.89), leading insurrectional movement, or providing firearms (art.90).

Emergency measures introduced under the framework of the state of emergency in 1992 lowered the age of criminal responsibility to 16 years. However, minors accused of terrorist or

subversive offences are not sentenced to death and courts take into account their age. These children are often sent to centres for juvenile offenders.

The chapter entitled crimes and offences against the Constitution (Part 2, Book 3, Title 1, Chapter 3) provides the death penalty for instigators of concerted action between civil and military authorities targeting internal security of the state (art.114), and violence against magistrate leading to the voluntary killing (art.148). Crimes of forfeiting (Part 2, Book 3, Title 1, Chapter 7) when it comes to banknotes, shares and bounds (art.197) and introducing such forfeits into the country (art.198) are also punishable by death.

The government has taken some steps towards the abolition of the death penalty. For instance it has introduced a draft law limiting the number of offences punishable by death in the Penal Code, which was submitted to the Algerian Parliament in 2006. The Algerian Parliament voted against the abolition of the death penalty. Crimes of forfeiting (Part 2, Book 3, Title 1, Chapter 7) when it comes to banknotes, shares and bounds (art.197) and introducing such forfeits into the country (art.198) which were punishable by death, are now punishable with life imprisonment according to amendments to the Penal Code introduced in December 2006 (law 06-23 of 20 December 2006).

Article 7: the right not to be tortured

Throughout the period under review in this briefing, there has been a pattern of torture and cruel, inhuman and degrading treatment (hereafter ill-treatment) of persons arrested and detained by the security forces. Reports of torture of persons detained by the police and gendarmerie have become much fewer since the internal conflict decreased in intensity and torture and other ill-treatment do not appear now to be widely practised in police stations.

However torture and ill-treatment of persons detained by the DRS on suspicion of having links to terrorism has remained persistent. A detailed report on this issue was submitted by Amnesty International to the Human Rights Committee before its pre-session in July 2007.

Amnesty International knows of several persons detained by the DRS in 2006 and 2007 who are not known to have been tortured. These persons are Algerian nationals deported by the UK to Algeria in 2006 and 2007 and detained by the DRS after arrival in Algeria, whose cases were high-profile and subject to much international scrutiny. In Amnesty International's experience, former detainees of the DRS are often reluctant to talk about any experience of torture for fear of reprisals against them and their families or re-arrest. Even in these high-profile cases, the DRS violated Algerian law (see the section, entitled Article 9: the right to liberty and security, in this briefing).

Methods and purpose of torture

The most frequent reports of torture include beatings, electric shocks, and the *chiffon* method, 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 stripped of their clothes and humiliated, beaten on the soles of their feet (method known as *falaka*), or suspended by the arms from the ceiling for prolonged periods of time until they

give information. In some cases, detainees reported that they had been threatened that female family members would be arrested and raped.

The purpose of the torture and other ill-treatment, in most cases reported to Amnesty International, is to extract information from the detainees about activities of armed groups in Algeria, or about international terrorism. Some detainees are reportedly asked to give the names of other people who would have links with terrorism. Amnesty International fears that some arrests by the DRS are made on the basis of information obtained from other detainees under torture or duress. Detainees are then usually forced to sign an interrogation report, which often contain confessions about involvement with armed groups or international terrorism, even though detainees are not allowed to read the report, or are too scared to ask to read it. Sometimes interrogation reports contain declarations that the detainees were well treated in detention.

Safeguards against torture not respected

The DRS (also known under its former name, Military Security) operates under the authority of the Ministry of Defence and remains a secretive and unaccountable force. Its members hold the powers of arrest and detention of the judicial police, although in practice there seems to be no judicial oversight of the arrests that they carry out, unlike other branches of the Algerian security forces, such as the police or the gendarmerie. Plain clothes DRS officers usually carry out arrests and their identity is rarely revealed to those they arrest and detain.

Detainees held by the DRS are usually taken to military barracks, such as the Antar barracks situated in Hydra in Algiers, which are not recognised places of detention. Article 52 of the Code of Criminal Procedure states 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. 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. It is while detainees are held in secret detention, without access to the outside world, that they are most at risk of torture in the hands of the DRS.

As said above (see Article 4), detainees suspected of possessing information about terrorism can be legally held for a period of up to 12 days without charge or access to legal counsel. But even the legal safeguards which could protect detainees from torture appear not to be respected by the DRS. Article 51 bis of the Criminal Procedure Code grants detainees the right to a medical examination by a doctor of their choosing at the end of the *garde à vue* detention if a request is made, and requests detainees to be informed of this right. Yet those detained by the DRS have not reported being examined by a doctor at the end of the 12 days pre-arraignment detention, nor have they said that they were informed of such right. Article 52 of the Criminal Procedure Code states that the public prosecutor can appoint a medical doctor to examine detainees held in pre-arraignment detention, either at his own initiative or at the request of the detainee or his family. Amnesty International is not aware of cases where

prosecutors would have ordered a medical examination of a detainee held by the DRS. The fact that prosecutors do not monitor unofficial places of detention used by the DRS further undermines their ability to order medical examinations on detainees. Physical evidence that torture may have been used is rarely investigated properly by the Algerian judicial authorities.

Case: On 23 December 2006, Mounir Hammouche, aged 26, was arrested by armed plain clothes security officers in the town of Ain Taghrout, in the *wilaya* of Bordj Bou Arreridj. His family, who had not had any news from him after his arrest, received a phone call on 29 December from security officials announcing that he was dead. The security officials said that he had probably committed suicide and that a forensic examination had already been conducted, hence there was no need for the family to request one. When the relatives of Mounir Hammouche got his corpse back, they noted that he bore a wound on his head and bruises on his hands and feet. They buried the body on 30 December, under heavy security presence. The autopsy report mentioned by the security forces is not known to have been given to the relatives of Mounir Hammouche. There has been no thorough investigation into the circumstances of his death.

Article 51 bis 1 of the Criminal Procedure Code also guarantees the right of detainees to communicate with their families and receive visits from them. Yet Amnesty International is not aware of any case in which persons detained by the DRS were allowed a visit by their family in the place of pre-arraignment detention. Those detained by the DRS are routinely denied access to the outside world, whether in the form of legal counsel, medical help, visits by families and by the judicial authorities, and are in effect held incommunicado.

Case: Fethi Hamaddouche did not come back home after going out on the evening of 2 March 2007 in Mostaganem, a town west of the capital, Algiers. On 5 March, armed DRS agents came to his family house. They then took Fethi's brother, Samir Hamaddouche, to their barracks in Mostaganem, in an area called "le Plateau". Samir was held at the barracks all day and reportedly beaten, apparently because he had asked the DRS agents if they had any authorization to search the house or an arrest warrant. DRS agents then brought Samir face-to-face with his brother Fethi, who was handcuffed and had a swollen face, apparently as a result of beatings. DRS agents asked Samir Hamaddouche to confirm his brother's identity and questioned him about his friends and relatives**.** Fethi was reportedly coerced by DRS agents into telling his brother that he was "part of them", possibly in reference to an armed group. Samir was released on the evening of 5 March.

Since 5 March, Fethi Hamaddouche's family has not been permitted to see him and has received no official news of his whereabouts. They reportedly received an anonymous telephone call about two months after Fethi's arrest, alleging that Fethi Hamaddouche had been transferred to the Hydra district in Algiers, the location of the Antar military barracks. There is no information of any charges against Fethi Hamaddouche and he has had no access to legal representatives. Fethi was reportedly able to make a phone call to his family in late July 2007, saying that he was well and would be released soon. He did not say where, why and by whom he was detained. He is still detained in an unknown location, more than seven months after his arrest.

Lack of investigations into claims of torture

Acts of torture and other ill-treatment are not usually investigated and punished, despite legal provisions in place under which victims could obtain some form of remedy.

As Algeria's third periodic report mentions, amendments were introduced in the Penal Code in 2004, explicitly making torture a crime[23] in Algerian law and specifying the penalties attached to it. However, the definition of torture found in the Penal Code is not consistent with the international definition of torture.

None of the cases of reported torture and other ill-treatment documented by Amnesty International in its 2006 report appear to have been investigated by the Algerian authorities. Amnesty International is not aware of a significant case where a DRS or other security officer has been prosecuted for acts of torture or other ill-treatment since the 2004 amendments to the Penal Code were introduced.

Fear of the DRS may prevent those who have been tortured to complain. But even for those who complain to the public prosecutor (or the judge) that they have been tortured, their claim does not seem to be investigated.

Furthermore, Amnesty International fears that the 2006 "national reconciliation" measures may grant impunity to the security forces for human rights violations committed after the adoption of the laws. Article 45 of Law 06-01 of 27 February 2006 granting impunity to the security forces seems to give blanket amnesty from prosecution for officials who may have been involved in torture or cruel, inhuman and degrading treatment. Moreover Article 46 of the Decree criminalizes criticism against the security forces in broad terms with up to five years' imprisonment and may thus be interpreted as potentially penalizing legal complaints against state agents suspected of torture.

[23] According to Article 9 of Decree 04-15 of 10 November 2004, which introduces Articles 263 bis, 263 ter and 263 quarter, which read as follow:
- Article 263 bis: "Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for any purpose whatsoever."
- Article 263 ter: "Anyone who uses, incites or orders the torture of another person shall be liable to a penalty of between 5 and 10 years' imprisonment and a fine of between DA 100,000 and DA 500,000."
- Article 263 quarter: "Any public servant who uses, incites or orders the use of torture for the purpose of obtaining information or a confession, or for any other reason, shall be liable to a penalty of between 10 and 20 years' imprisonment and a fine of between DA 150,000 and DA 800,000.
The sentence shall be life imprisonment for certain crimes when the torture precedes, accompanies or follows any crime other than murder.
Any public servant who condones or fails to report the acts referred to in article 263 bis of this law shall be liable to a penalty of between 5 and 10 years' imprisonment and a fine of between DA 100,000 and DA 500,000".

Article 9: right to liberty and security

Article 9 guarantees the right of every person to liberty and security and sets out the conditions for lawful detention. Persons arrested by the DRS are routinely denied the protection set out in the ICCPR.

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*. 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.

These safeguards which are enshrined in Algerian law are routinely disregarded by DRS personnel. 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. This breaches Article 9.2 of the ICCPR which stipulates that anyone arrested should be promptly informed of any charges against him.

Once taken into custody, detainees are not informed of their right to communicate immediately with their families. The families of those arrested are generally not informed of the place of detention of their loved ones, nor are they afforded the means to communicate with them, let alone visit them. Relatives who enquire with the police or the gendarmerie, or the public prosecutor are generally told that the person is not being detained, or that the place of detention is unknown. Sometimes they are informally told that their relative is held by the DRS, but not where. There is no publicly available registry kept by the judicial authorities of those arrested and detained by the DRS. In practice, detainees held by the DRS are held incommunicado.

Case: Despite the routine disrespect by the DRS of the rights of detainees guaranteed in Algerian law, other states have deported Algerians suspected of links with terrorism back to Algeria, in violation of the principle of *non-refoulement*. For instance, several Algerian nationals have been deported from the United Kingdom since 2006, on the grounds that they represented a "threat to national security".[24]

In all eight cases of deportation by the UK to Algeria monitored by Amnesty International, the persons deported were arrested and held by the DRS after arrival in Algeria. All were picked up by the DRS at the airport, apart from one who was arrested days after arrival in Algiers. None of them reported having been tortured while detained by the DRS, which Amnesty International welcomes. However, at least one person (known only as "H" for legal reasons), said that he was held in a place where he could hear other people crying and screaming with pain. Three of the detainees were allowed to phone relatives living in Algeria from their place of detention to reassure them. This is unprecedented, as usually those detained by the DRS are routinely denied the right to make any contact with their families during pre-arraignment detention. However, none of the eight men were informed where they

[24] For more information, see *United Kingdom: Deportations to Algeria at all costs*, Amnesty International (AI index: EUR 45/001/2007, 26 February 2007).

were being detained during the period of pre-arraignment detention. Moreover, none of them were able to receive visits by relatives, as stipulated in Article 51 bis 1 of the Algerian Criminal Procedure Code. This shows that even in cases on which there is high scrutiny, the DRS continues to flout safeguards on the rights of detainees guaranteed under Algerian law. These safeguards, if respected, could go some way in reducing the risk of torture or ill-treatment against persons detained by the DRS. However, the routine disrespect by the DRS of these safeguards and their lack of accountability mean that the risk of torture and ill-treatment on those they detain remain very real.

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". 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 practice, there does not seem to be a systematic judicial review of *garde à vue* detentions of persons held by the DRS. 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 and as to the reasons behind the arrests and the place of detention. This 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. The public prosecutor does not seem to effectively oversee detention in terrorism-related cases, as required under Article 51 of the Criminal Procedure Code. In practice, detainees suspected of terrorist activities are routinely held by the DRS for 12 days, or even longer, apparently without authorization by the prosecutor.

Detainees are not allowed legal counsel during the period of *garde à vue* under Algerian law. Persons detained because of alleged links with terrorism can therefore be held for 12 days without access to a lawyer. This heightens the risk that they may be tortured or ill-treated. International law provides that restrictions and delays in granting access of detainees to the outside world are permitted only in very exceptional circumstances and for short periods of time.

Moreover, the DRS sometimes hold people without charge or access to legal counsel for periods far longer than the 12-day limit prescribed by law. Such arbitrary detentions can be prolonged indefinitely, for months or even years. Sometimes detainees held in excess of the period of *garde à vue* are subjected to "house arrest" (see Article 12). Detainees held by the DRS under such conditions, outside of the legal framework, are not able to challenge the lawfulness of their detention, as they have no access to judicial review until they are first brought to a judge, which can happen months after their arrest.

Case: Mohamed Harizi, an Algerian national born in 1974, was held by the DRS for two years and 34 days without charge or judicial review. He was arrested on 15 December 2002 in Mahdia, in Tiaret province, reportedly by security forces who stormed his family's house at 11.30 pm. 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.

For more than two years, Mohamed Harizi was held in secret detention at the Antar military barracks in Algiers, where he was reportedly tortured by DRS officers with electric shocks and the *chiffon* method. 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. Mohamed Harizi 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, before returning to his country in 2002.

Detainees who are remanded in custody after being charged have sometimes waited for years before being brought to trial. Article 9.3 of the ICCPR provides that everyone has the right to be entitled to trial within a reasonable time or to release.

Article 125 of the Code of Criminal Procedure grants the Algerian courts jurisdiction over transnational crimes. The examining magistrate may order pretrial detention for a period of four months, with the possibility of extension until the parties concerned have gathered the proof needed to support the accusation. Article 125 bis (Act No. 01-08 of 26 June 2001) states:

"*In the case of crimes defined as terrorist acts or as subversive, the examining magistrate may extend the pretrial detention five times in the manner described in article 125-1.*

In the case of transnational crimes, the examining magistrate may also request the indictment division to extend pretrial detention within the month preceding its expiration, as described in article 125-1. Two such requests may be made.

If the indictment division decides to extend pretrial detention, each extension may not exceed four months and the total length of pretrial detention may not exceed 12 months."[25]

The length of allowable pre-trial detention in Algerian law is a particular case for concern. Under the Penal Code, and as reported by Algeria to the UN Counter-Terrorism Committee in 2001, where terrorist crimes are concerned, the examining magistrate may extend pre-trial detention five times under article 125 bis, Act No. 01-08 of 26 June 2001. In the case of transnational crimes, the examining magistrate has the option of extending pre-trial detention

[25] Algeria report to the Counter-Terrorism Committee in 2001, UN Doc. S/2001/1280 at 8.

11 times, for a period of four months each time, leading to the possibility of a detainee being held for 44 months before trial.

Case: Malik Medjnoun, who was arrested on 28 September 1999, is still awaiting trial, eight years after his arrest. His case was submitted to the Human Rights Committee which ruled in August 2006 that he should be immediately tried or released. The Human Rights Committee also urged the Algerian authorities to open investigations into alleged violations of his human rights. Malik Medjnoun was held in secret detention for seven months after his arrest, during which time he was reportedly tortured. In 2000, he was charged with participating in the killing of singer Lounes Matoub in 1998.

Article 12: right to freedom of movement

The Algerian authorities have used house arrest measures to restrict the movement of persons whom they deem to be a threat to public order. In some cases, people have been under control orders for years. Article 12.3 states that the right to liberty of movement and the right to choose one's own residence "[…] *shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present* Covenant.."

House arrest measures can be issued under special powers attributed to the Minister of the Interior in the context of the state of emergency, in force since 1992 (see Article 4). Article 6.4 of the decree on the state of emergency[26] empowers the Minister of the Interior to place individuals under house arrest (*assignation à residence*) 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.

House arrest measures require an individual to remain at a fixed place of residence and are designed to be an alternative to imprisonment or detention. In the past few years, some detainees were placed under house arrest by the Ministry of the Interior. In some of these cases, the house arrest measures only stated that the individual was not allowed to leave the confines of the province of Algiers and did not specify the address of residence or the duration of the measure. As in these cases, the individuals were already being detained in DRS barracks, it appears that the measure was used to conceal prolonged arbitrary detention by the DRS.

Article 13: rights of refugees and migrants

Article 13 prohibits arbitrary and collective expulsions of aliens and provides substantive and procedural guarantees to any person whose expulsion is sought. These include the right to challenge an expulsion and its lawfulness before a competent authority.

[26] Presidential Decree No. 92/44, published in the Algerian official bulletin (*Journal Officiel*) of 9 February 1992.

Thousands of migrants are reportedly deported every year from Algeria. Press reports, citing police sources, indicate that some 35,000 migrants from 55 African and Arab countries have been arrested over the past six years and 32,000 of them deported. Amnesty International is concerned that, in many cases, the deportations are not conducted with adequate safeguards, including the possibility of appeal against the deportation orders, and that therefore they constitute collective expulsions. In some cases, the individuals deported were in need of international protection and not given the opportunity to challenge their expulsion on the basis of a review into their individual circumstances, to ensure their expulsion would not expose them to serious human rights abuses.

There have been allegations of torture and other ill-treatment of irregular migrants by Algerian police in recent years, including press reports of migrant women being subjected to sexual abuse by Algerian law enforcement officials. The reports indicate that such sexual abuse has occurred on several occasions in the last three years and that, in some cases, women have allegedly been subjected to gang-rape by members of the border police. Most recently, Amnesty International has received reports that three migrant women among those expelled from Morocco to Algeria on the night of 23-24 December 2006 were subjected to a body search and then raped by Algerian border police. These incidents allegedly occurred at the Algerian-Moroccan border near the Moroccan town of Oujda. No investigations into these reports are known to have been held.

Even persons who have been recognised as refugees by the office of the High Commission for Refugees in Algeria have been subjected to deportation.

Case: 28 men, apparently of Congolese origin who had been granted refugee status by the UN High Commissioner for Refugees Office in Algeria, were taken for deportation by the Algerian authorities on 19 August 2007. The men had been held for months in a detention centre in Reggan, southern Algeria, waiting to be resettled in a third country. The decision to deport them was apparently taken after they were tried by a court on 16 August for entering Algeria illegally. They were not notified that they would be tried and were not afforded legal counsel during the trial.

The 28 men were taken on trucks all the way to the southern border with Mali. During the journey, they were given very little food and were handcuffed and held in detention centres each night. One of them was reported missing on arrival to the Malian border and his whereabouts are unknown. The 27 others were dumped at Tinzaouatene on the Malian border on 24 August, without food, water or medical aid. Tinzaouatene has recently become a zone of activity for a Malian “rebel” group and the refugees were unable to walk towards the nearest city because of insecurity. They were finally taken by truck to Bamako, the capital of Mali, where they were able to meet officials of the UN High Commissioner for Refugees.

Article 14: right to a fair trial

The right of every person to a fair trial

Clear violations of Articles 7 and 9 of the Covenant, detailed above, undermine the right to a fair trial in Algeria. Amnesty International would like to underline two additional concerns regarding the right to a fair trial in Algeria.

Defendants accused of terrorism-related offences are often not assisted by a lawyer when they are presented for the first time to an examining judge, violating Article 100 of the Criminal Procedure Code, which grants detainees the right to a lawyer of their choice and the right not to make statements before a judge. In the case of terrorist suspects, even if a lawyer has already been appointed by the relatives of the detainee, the lawyer often does not know when the detainee will be brought before a judge. The detainee may be presented to a judge at any time during the 12 days period of *garde à vue*, or days, months or years later. The lawyer appointed to defend the detainee often finds out that there was a hearing after the hearing happened. Lawyers sometimes go to the office of the examining judge 12 days after the arrest of the person they are looking for, in the hope that their client will be brought there on that day. Detainees are often not told of their right to be assisted by a lawyer by the judge. The right to legal counsel is therefore severely undermined in the case of terrorist suspects in Algeria.

Amnesty International is also concerned at the use of interrogation reports obtained by the DRS as evidence in Algerian courts. Such reports often constitute the only evidence used to convict a person in court, although Article 215 of the Criminal Procedure Code stipulates that interrogation reports of the judicial police do not constitute evidence and may only be used for information during judicial proceedings.

Given the lack of oversight and persistent allegations of torture in DRS custody, it is clear that these statements are often obtained under torture or other ill-treatment which serves to extract confessions from detainees. Given the general lack of investigations into detainees' allegations of torture and the pattern of impunity of members of the DRS, the validity of such statements is rarely challenged by the examining judge or at trial. No prohibition against the use or admissibility of statements or confessions obtained under torture exists in Algerian law.

Case: 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. He was arrested by plain clothes officers who did not identify themselves and informed him that French authorities had requested his arrest. He believes the place where he was detained was an army barracks, 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. He was denied access to legal counsel and to a court to

challenge his detention. Amnesty International fears that he may have been subjected to torture. 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.

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". He was released on 4 March 2006 in the context of "national reconciliation" measures. However, he was arrested again on 2 April and, after three days of secret detention by the DRS, transferred to prison. He was due to be brought to trial in July 2007, but the trial was postponed, apparently because the prison authorities "forgot" to transfer him from prison to court. He may now be tried in the next judicial session, starting in October 2007.

Independence of the judiciary

The Constitution affirms the independence of the judiciary in Articles 138, 147 and 148. Articles 147 and 148 specify that judges are protected against any form of pressure, and are subject only to the law. The Algerian Constitution also includes a separate part, entitled 'Control and Consultative Institutions, Chapter I Control.' The Constitution provides for a Constitutional Council to guarantee respect for the Constitution.

Legislation enacted in 1989 created the High Judicial Council (Conseil Supérieur de la Magistrature), composed of a majority of magistrates elected by their peers, and responsible for overseeing the career of magistrates. However, subsequent decrees have modified the composition of the High Judicial Council in favour of the Executive and curtailed the powers of the High Judicial Council, which has become an advisory rather than a decision-making body.

As a result, the security of tenure of judges and prosecutors is no longer guaranteed and is subjected to the will of political organs. The judiciary in Algeria is highly dependant on the Executive for career promotion. Security of tenure is an essential guarantee of the independence of the judiciary. Principle 12 of the UN Basic Principles on the Independence of the Judiciary states that judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.The potential manipulation of magistrates by the Executive also undermines the right of individuals to a fair trial.

The President, according to Article 78(7), and Article 154 of the 1996 Constitution presides over the High Judicial Council. The High Judicial Council decides the appointment, transfer

and progress of magistrate's careers. It also controls the discipline of magistrates. According to Article 3 of Organic Law no. 04-11 of 6 September 2004, magistrates are proposed by the Minister of Justice following deliberations of the High Judicial Council and appointed by Presidential decree.

The composition of the High Judicial Council, set out in Organic Law No. 04-12 of 6 September 2004, gives the Executive several seats on the High Judicial Council. Article 3 sets out that the High Judicial Council shall consist of the President, who presides over the Council, the Minister of Justice who serves as vice-President of the Council, the Chief Justice of the Supreme Court, the Chief Prosecutor before the Supreme Court (article 3(1)-3(3)), as well as six other individuals appointed by the President of the Republic (article 3(5)). The remaining ten seats are filled with judges appointed by their peers (article 3(4)). Decisions of the Council need a quorum of two thirds (article 14) and are taken on the basis of a majority vote, with the President holding the deciding vote in the event of a tie (article 15).

The High Judicial Council controls the nomination, movement and promotion of magistrates (articles 18-20 of Law No. 04-12), as well as disciplinary measures (articles 21-33). When the Council sits as a disciplinary body, it is presided over by the Chief Justice of the Supreme Court. Given the structure of the High Judicial Council, it is clear that the Executive maintains a position of influence over the career and security of tenure of magistrates, making the judiciary subject to pressure by the government.

The politicization of the judiciary became apparent in the run-up to presidential elections in 2004. In 2003, there was a struggle for the control of the political party National Liberation Front (Front de Libération Nationale, FLN) between Ali Benflis, former Prime Minister, and President Abdelaziz Bouteflika. The decision of an FLN congress to announce Ali Benflis as leader of the party was cancelled by an administrative court at the end of the year 2003. This ruling was confirmed in March 2004 by the State Council, which regulates the activity of administrative courts.

Judges who denounced the politicization of the judiciary were dismissed or subject to disciplinary procedure. For example, Judge Mohamed Ras El Ain, President of the judges trade-union, was permanently dismissed as a judge in a disciplinary hearing held by the High Judicial Council. He was not afforded due process during the procedure, as he was denied access to the evidence of his disciplinary file. Zitouni Mohamed, President of the Court in Algiers was relieved of his duties. Menasria Rafik, a deputy prosecutor, was suspended and brought to a disciplinary hearing.

Defence lawyers and equality of arms

Lawyers providing defence in sensitive cases, such as cases of persons suspected of links with armed groups in Algeria or international terrorism, or legal aid in "disappearance" cases., can face harassment by the authorities.

In 2006, human rights lawyer Amine Sidhoum was charged with violating laws governing the organization and security of prisons, based on allegations by the prison authorities that he had passed items to detainees without authorization. The items were in fact business cards given to detainees by Amine Sidhoum. These activities were legal and carried out in the interest of assisting his clients. The charges against him were based on legal provisions which expressly ban the illegal transfer to detainees of "money, correspondence, medicine, or any other unauthorized object". By misusing this provision to criminalize the passing of contact details, the authorities prevented the lawyer from offering his clients an effective defence.[27] Amine Sidhoum was acquitted in April 2007.

In May 2006, 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 39th Session of the African Commission on Human and People's Rights held in Banjul, Gambia. This threat apparently related to Article 46 of Law 06-01 Implementing the Charter for Peace and National Reconciliation, which criminalizes debate about the role of state security forces in the internal conflict.

He also faces defamation charges on a separate case. In an interview with a journalist in May 2004 he criticised the fact that one of his clients had been detained for two and a half years without trial. Due to quotes attributed to him following this interview, he was charged in September 2006 with bringing the judiciary into disrepute. The case is still pending.

Article 15: legality of criminal offences

A broad definition of "terrorism"-related offences in the Algerian Penal Code undermines Article 15.

As reported by the authorities to the UN Counter-Terrorism Commission in 2001, legislative Decree No. 92-03 of 30 September 1992 on combating subversion and terrorism (amended and supplemented by Legislative decree No. 93-05 of 9 April 1993), governs the determination of terrorist related offences and related acts, amending the Penal Code and Code of Penal Procedure. Article 1 of Decree No. 93-03, reproduced in article 87 bis of Ordinance No. 95.11 of 25 February 1995 (amending and supplementing Ordinance No. 66.156 of 8 June 1966 enacting the Penal Code) defines as subversive or terrorist act "any offence targeting State security, territorial integrity or the stability or normal functioning of institutions through any action seeking to:

- Spread panic among the public and create a climate of insecurity by causing emotional or physical harm to people, jeopardizing their lives or freedom or attacking their property;

- Disrupt traffic or freedom of movement on roads and obstruct public areas with gatherings;

- Damage national or republic symbols and profane graves;

[27] For further information, see *Algeria: Human rights lawyers threatened with imprisonment on trumped-up charges*, Amnesty International Public Statement (AI index: MDE 28/018/2006, 23 September 2006)

- Harm the environment, means of communication or means of transport;

- Impede the activities of public authorities and bodies serving the public, or the free exercise of religion and public freedoms;

- Impede the functioning of public institutions, endanger the lives or damage the property of their staff, or obstruct the implementation of laws and regulations"

Article 2 of Decree No. 93-03, reproduced in article 88 bis 3 of the Penal Code, equate the following with terrorist acts:

- Establishment of associations, bodies, groupings or organizations for the purpose of engaging in subversive or terrorist activities;

- Membership or participation in such subversive or terrorist associations in any form;

- Advocating terrorism and encouraging or funding terrorist activities;

- Membership or participation in such subversive or terrorist associations in any form;

- Advocating terrorism and encouraging or funding terrorist activities;

- Reproducing or disseminating documents, recordings or printed matters advocating terrorism.

The overbreadth of these provisions and their lack of specificity undermines many rights enshrined in the ICCPR, including the basic principle of legality which underpins Article 15. Moreover, they create a clear danger for their arbitrary application by state authorities. These vague provisions have been interpreted to include the peaceful exercise of rights enshrined in the ICCPR.

These amendments to the Penal Code[28] doubled penalties for offences qualified as terrorist activities and the scope of the death penalty was enlarged to include crimes previously punishable by life imprisonment. Activities qualified in broad terms such as encouragement of 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.[29] Given the overbroad definition of terrorism and terrorist offences, these provisions establish a system of broad discretionary power and fail to meet the basic requirements of legality.

[28] Decree No. 95.11 of 25 February 1995, article 87 bis 4: "Anyone who justifies, encourages or finances the acts covered by this section by any means shall be subject to 5 to 10 years' imprisonment and a fine of DA 100,000 to DA 500,000".
[29] Articles 87 *bis* 1, 87 *bis* 4 and 87 *bis* 6 of the Penal Code.

Article 17: right to privacy

Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation.

As mentioned in the case of Fethi Hamaddouche under Article 7, DRS and other security officials have carried out searches of people's houses without providing a search warrant.

Certain aspects of private life are criminalized under Algerian law. For instance, consensual sexual relations between two adults outside of marriage are criminalized, as well as consensual same-sex relationships. Article 338 of the Penal Code punishes acts of homosexuality with two months to two years' imprisonment and with a fine of between 500 and 2000 dinars. Article 333 relating to offences of undermining public decency, increases penalties in the case of "acts against nature with a member of the same sex" and provides for a penalty of imprisonment of between six months and three years, and a fine of between 1,000 and 10,000 dinars.

Article 18: right to freedom of religion

Article 18 protects the right of every person to freedom of religion.

Act No. 01-09 of 26 June 2001, which amended and supplemented the Penal Code, in accordance with Article 87 bis 10 of the Code, establishes a penalty of 3 to 5 years' imprisonment and a fine of 50,000 to 200,000 dinars for "*anyone who, through preaching or by any other action, conducts an activity contrary to the noble mission of the mosque or likely to undermine social cohesion or to seek to justify and advocate the acts envisaged in this section*".

On 28 February 2006, a law was adopted to regulate religious faiths other than Islam. The law criminalizes religious speech or writings that are deemed to undermine the laws of the state or incite people to rebellion; incitement, coercion or other "seductive" means to convert a Muslim person to another religion; the collection of funds on the grounds of religion that are not regulated by the state; and religious activities that are not regulated by the state. Many provisions of the law are vaguely worded and could undermine the right of every person to freedom of religion.

The law provides that religious faiths other than Islam are to be practiced in places approved by the state and creates a national commission on religious faiths, empowered to regulate the registration of religious associations.

In May 2007 the Algerian government issued Decree 07-135, which specifies that a request for permission to observe non-Muslim religious rites must be submitted to the *wali* at least five days before the event. This request should include information on three main organizers of the event, its purpose, the number of attendees anticipated, a schedule of events, and its planned location. The *wali* is empowered to regulate the places where such rites can occur and to refuse permission to a religious event if it presents a danger to public order.

In June 2007 another decree, Decree 07-158, was issued to provide for the composition of the national commission for religious cults other than Islam and for its operations. The Decree states that the national commission is to be headed by the Minister of Religious Affairs and Endowments, and composed of senior representatives of the Ministries of National Defence, Interior, Foreign Affairs, and National Security, the National Police Headquarters, and the national human rights advisory body, the CNCPPDH.

Amnesty International has obtained little information as to the application of the law. Press reports in June 2007 said that five persons were prosecuted under the law, on accusations of preaching Christianity and undermining public order. Their sentences reportedly ranged from one year imprisonment to fines.[30]

Article 19: right to freedom of expression

Article 19 enshrines the right of every person to freedom of expression.

Algerian authorities continue to harass and judicially persecute the Algerian private media, in particular by launching court actions against journalists and private press on various charges, including libel and slander. Amendments to the Penal Code introduced in June 2001 (Law 01-09 of 26 June 2001) have curtailed the right to freedom of expression in Algeria, including by increasing penalties for the offence of defamation. Amendments to the law prescribed prison terms of up to one year and fines of up to 250,000 dinars for individuals found guilty of defaming the President of the Republic or other state institutions such as the army, the parliament or the judiciary, using the written or spoken word or an illustration. The editor and publisher of an offending article or illustration, as well as the publication itself, are also liable to be prosecuted under the law. Punishments, including sentences of up to three years' imprisonment, were also introduced for anyone attempting to preach in places of prayer without authorization (Law 01-09 of 26 June 2001, Article 2, introducing Article 87 bis 10 in the Penal Code).

Journalists working in privately-owned media have been prosecuted on charges of publishing false news or "defamation". Human rights activists have also been brought to trial on similar charges.

Case: Mohamed Smain, President of the Relizane branch of the Algerian League for the Defence of Human Rights (Ligue algérienne de défense des droits de l'homme, LADDH) was sentenced to one year in prison in February 2002 on charges of defamation, after raising questions in the press relating to the state's involvement in serious human rights violations. His case relates to the discovery of mass grave sites near Relizane, western Algeria. Although the authorities have generally exhumed the mortal remains found in these graves, they have reported that it was not possible to identify the majority or all of the bodies found. Mohamed Smaïn alleged that the bodies of some 20 victims of enforced disappearance carried out by the security forces and local state-armed militias had been buried at a mass grave site in Sidi

[30] See *Procès de cinq algériens accusés d'avoir prêchés le christianisme*, El Khabar, 4 September 2007, available at http://www.algeria-watch.org/fr/article/just/proces_precheurs.htm

Mohamed Benaouda in the province of Relizane and that the groups responsible relocated the bodies when the site was discovered in order to cover up their crimes.

A court case was brought against him in 2001 and he was convicted of defamation of nine militiamen in January 2002 and sentenced, on appeal, to one year's imprisonment, a fine of 5,000 dinars and total damages of 270,000 dinars (about US$ 3,900). He appealed the decision to the Supreme Court, which ruled in mid-2007 that he should be re-tried by the Appeal Court.[31] His re-trial is expected to occur before the end of 2007.

The promulgation, on 27 February 2006, of the Presidential Decree implementing the National Charter for Peace and Reconciliation, restricted further investigation or news coverage of the crimes and human rights abuses that took place during Algeria's civil war in the 1990s . The decree, discussed under article 2 of this report, imposes sweeping restrictions on freedom of the press, as well as heavy fines and prison terms of between three to five years for "anyone who by speech, writing, or any other act, uses or exploits the wounds of the National Tragedy to harm the institutions of the Democratic and Popular Republic of Algeria, to weaken the state … or to tarnish the image of Algeria internationally." Specifically, article 46 of the Decree states:

Anyone who, by speech, writing, or any other act, uses or exploits the wounds of the National Tragedy to harm the institutions of the Democratic and Popular Republic of Algeria, to weaken the state, or to undermine the good reputation of its agents who honorably served it, or to tarnish the image of Algeria internationally, shall be punished by three to five years in prison and a fine of 250,000 to 500,000 dinars.

This provision threatens the right of victims and their families, human rights defenders, journalists, and any other Algerians to document, protest, or comment critically on the conduct of state security forces during the years of the internal conflict. This further narrows the space for free expression in Algeria.

Article 21: right to peaceful assembly

Articles 21 provides for the right to peaceful assembly.

As mentioned under Article 6 in this briefing, demonstrations in Kabylia in 2001 were severely repressed. Since the events in Kabylia in 2001, the Algerian authorities have reportedly not authorized demonstrations in the capital Algiers.

The holding of assemblies is subject to an authorization by the *wali* (prefect) under the authority of the Ministry of Interior, which has to be requested eight days before the event. In the case of public meetings, the authorization has to be requested five days before the event. In practice, authorization of public assemblies and meetings are often denied, if they are related to topics that the authorities do not approve of.

[31] See Amnesty International's press release *Algeria: Human rights activist sentenced to a year in prison* (AI Index: MDE 28/005/2002) of 25 February 2002.

Case: A seminar on "Truth, Peace and Reconciliation" was to be held on 7 February 2006 with associations of the families of the "disappeared" and associations representing victims of armed groups, with international experts on transitional justice. A request for authorization was reportedly filed, but was then refused the night before the event. Some international experts had their visa for travelling to the seminar reportedly denied. On the following day, people gathered for the seminar in front of a hotel were blocked from entering by the security forces. The seminar did not take place.

Article 22: right to freedom of association

Article 22 enshrines the right to freedom of association. Article 22.2 sets out strict criteria for restrictions of the right to freedom of association. It states that: "*No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right*."

Article 42 of the Algerian Constitution guarantees the right to create political parties as long as they are not based on "religious, linguistic, racial, gender-related, corporatist or regional" grounds. A law (Law no 97-09 of March 6, 1997) on political parties reaffirms these restrictions to the foundation or activities of political parties in its Article 5. Article 3 of the same law stipulates that "*the fundamental components of the national identity in its three dimensions, Islam, Arabism and Amazighté [Berber ethnicity], cannot be exploited for partisan propaganda purposes.*"

These restrictions are vaguely worded and therefore subject to interpretation by the authorities. In 1999, at least three political parties failed to obtain their registration under law 97-09. They were the Movement for Fidelity and Justice (WAFA), headed by the former Minister of Foreign Affairs and 1999 presidential candidate Ahmed Taleb Ibrahimi; the Democratic Front (FD), headed by Sid Ahmed Ghozali; and Amara Benyounes' Union for Democracy and the Republic (UDR).

There are no criteria set out for the application of this provision, which again is vaguely worded and can be used to undermine the fundamental right to freedom of association. This provision is implicitly aimed at members of the FIS, which was banned in 1992.

The Charter for Peace and National Reconciliation of 2005 proposes to ban from political life those "responsible for instrumentalizing religion" for political ends. Algerians and others see this formulation as targeting the Islamist Salvation Front (FIS) and its leaders. The military-backed government banned the FIS after that party won the first round of parliamentary elections in December 1991. The Charter states:

"*Although the Algerians are a forgiving people, they cannot forget the tragic consequences of the nefarious instrumentalization of the precepts of Islam, the state religion. They affirm their right to protect themselves from any repetition of such missteps and decide, in a sovereign*

manner, to forbid those responsible for that instrumentalization of religion any possibility of exercising any kind of political activity, regardless of the banner.

The sovereign Algerian people decide also that the right to engage in political activities cannot be extended to anyone who participated in terrorist activities and who, in spite of the frightful human and material harm inflicted by terrorism and by the instrumentalization of religion for criminal ends, refuses to recognize his responsibility in conceiving and putting into place a pseudo-Jihad policy against the nation and the institutions of the Republic."

Law 06-01 implementing the National Charter for Peace and Reconciliation provides in Article 26 that political activities by anyone responsible for having used religion that has led to the "national tragedy" are prohibited.

Neither the Charter, nor Law 06-01 spell out the details of how the prohibition would be carried out. The potential effect on freedom of association is clear. While a state may limit the participation of individuals or groups from political life who practice or incite violence, the lack of specific criteria for imposing such a ban violates the principle of legality and creates the possibility of arbitrary use and unjustified limitations on freedom of association. Any criteria which would ban an organisation or individual from participating in political life must be sufficiently explicit and clear, and subject to review by an impartial and independent judicial body.

Article 24: right to protection of children

Article 24 provides that every child should have the right to protection as a minor, without discrimination. Every child shall have a name.

There is clear discrimination in Algeria between children born during a legal marriage and children born outside of wedlock. Article 40 of the Family Code provides that paternity is established by a valid marriage, even if the marriage is annulled or ends after the conception of a child. Although Article 40 also allows judges to use scientific methods to determine paternity and also opens ways to register children born out of a customary marriage, it does not have specific provisions regarding children born out of wedlock who have not been recognised by their father.

The legal effect of these provisions is that children who have not been recognized by their father cannot then be registered under their father's name and therefore carry the name of their mother, in place of the two names given under paternal filiation. These children often suffer from the social stigma associated with extra-marital sexual relations. As a measure to alleviate the stigma associated with being born out of wedlock, the Algerian authorities have recommended that a male name be attributed to children born out of wedlock who are to be registered under their mother's name.

Abandoned children whose father and mother are unknown can acquire the name of their male legal guardian if he requires. Although adoption is forbidden in law, a procedure of legal fostering (*kafala*) allows abandoned children to be placed and raised in foster families.

However, in the case of death of the foster male parent (*kafil*), tutorship of the foster child (*makfoul*) is transferred to heirs and assignees of the deceased. Although the foster mother, as wife of the deceased, is among the heirs, the decision whether to maintain the tutorship of the foster child is transferred to all the heirs and assignees. In the case of children born under marriage, tutorship is automatically transferred to the mother. In the case of divorce of foster parents, custody of the foster child goes to the father, who is the legal guardian under the *kafala* procedure. In the case of legitimate children, custody falls to the mother in order of priority, according to the changes in the Family Code (see Article 3).