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Algeria: New Amnesty Law Will Ensure Atrocities Go Unpunished

(London, Paris, and New York, March 1, 2006) -- A presidential decree in Algeria will consecrate impunity for crimes under international law and other human rights abuses, and even muzzle open debate by criminalizing public discussion about the nation's decade-long conflict, four human rights groups cautioned today.

The organizations are Amnesty International, Human Rights Watch, the International Center for Transitional Justice, and the International Federation for Human Rights.

On 27 February, Algeria's full cabinet, with President Abdelaziz Bouteflika presiding, approved the "Decree Implementing the Charter for Peace and National Reconciliation", bypassing a debate in parliament, which is not in session. The full text of the law was not disclosed before its adoption.

The organizations called the law's impunity measures a major setback for human rights in Algeria. The measures include a blanket amnesty to be extended to the security forces and seemingly also to state-armed militias, while widening previous partial amnesties for members of armed groups, all of whom have committed crimes under international law and other grave human rights abuses that so far have not been investigated. The government presented the law as "implementing" President Bouteflika's "Charter for Peace and National Reconciliation", which Algerian voters approved in a referendum on 29 September 2005. However, that charter did not expressly mention any amnesty for security force members.

Confirming fears expressed by the signatory organizations in a joint statement of 14 April 2005, the proposed new measures amount to a denial of truth and justice to the victims of the abuses and their families. They will bar victims and their relatives from seeking justice in Algeria and prevent the truth about these abuses from emerging through Algerian courts. These measures, which extend to crimes against humanity and other grave abuses, contravene Algeria's obligations under international law to investigate such abuses, hold their perpetrators accountable, and provide victims judicial remedies.

Algeria is emerging from a decade of internal conflict in which up to 200,000 people were killed and several thousand more "disappeared". To date, Algerian authorities have largely failed to investigate the human rights abuses committed both by armed groups and state security forces since the conflict began in 1992. Rather than moving to prevent future abuses by ending this *de facto* impunity, Algerian authorities have now decreed a broad amnesty for past abuses. In the chapter entitled "Measures in Recognition of the Artisans of Safeguarding the Democratic and Popular Republic of Algeria", the law states, according to the version of the text published in Algerian newspapers:

Article 44: Citizens who, through their involvement or their determination, contributed to saving Algeria and protecting the nation's institutions, performed acts of patriotism.

Article 45: No legal proceedings may be initiated against an individual or a collective entity, belonging to any component whatsoever of the defense 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.

The text does not explicitly mention members of civilian militias armed by the state, the so-called "Legitimate Self-Defense Groups". However, the phrases "artisans of safeguarding the...Republic" and "belonging to any component whatsoever of the defense and security forces" suggest that the amnesty in fact covers abuses committed by members of these groups.

The decree also 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". However, these exceptions, no matter how appropriate, do 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. The amnesty would also cover other grave crimes committed by armed groups, including torture and the abduction of persons whose fate remains unknown.

Moreover, no details have been provided concerning the mechanism or process for determining whether armed-group members applying for amnesty are ineligible due to their implication in "collective massacres, rapes, or the use of explosives in public places". Given the virtual lack of investigations into these crimes when they were committed, a thorough vetting process today to exclude their perpetrators from the amnesty would require much political will and resources from the state. The Civil Harmony Law of 1999 created a screening mechanism that operated arbitrarily and with a lack of transparency, resulting in *de facto* wide-ranging impunity for abuses committed by armed groups.

The law further proposes to compensate families of "disappeared" persons, many of whom suffer economic hardship. There is no guarantee that such compensation will be proportional to the gravity of the violation and the harm suffered, in keeping with international standards. Compensation payments are conditional on families obtaining death certificates for their "disappeared" relatives, a measure that many of them oppose as long as the state does not provide them with the truth about the fate of their loved ones. The summary does not even mention the right of these families to this information. After years of broken promises by state officials to investigate and provide the truth, this new measure aims to erect a permanent barrier to that truth, all the more so because the impunity provisions cited above preclude relatives from seeking information and justice in domestic courts, either through civil or criminal complaints.

Perhaps most ominously, the new legislation seeks to end not only prosecutions for crimes of the past, but even public debate about them. 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 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. It even threatens to penalize families of the "disappeared" who continue to campaign for disclosing the truth about the fate of their relatives. At a time when Algerian authorities have been aggressively prosecuting journalists working in privately-owned media for independent reporting and critical speech, and when state media allow virtually no dissenting views, laws based on this formulation would further narrow the space for free expression in Algeria, and for pursuit of truths about past events.

Article 47 of the decree empowers the 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." This sweeping presidential power undermines the rule of law in Algeria and opens the way for further measures that grant impunity to perpetrators or that curb free speech. A similar provision of the 1999 partial amnesty act, known as the "Civil Harmony Law", led to President Bouteflika granting a blanket amnesty in January 2000 to all members of two armed groups that agreed to lay down their arms, regardless of their possible implication in grave human rights abuses.

The signatory organizations recognize that the legacy of Algeria's past should be dealt with in ways determined by Algerians themselves. However, a national referendum, such as the one held on 29 September 2005, cannot be the means by which a government evades its international obligations by adopting national legislation that runs contrary to them. Respect for and protection of fundamental human rights, as well as the right to know the truth and obtain justice, cannot be subject to a majority vote.

Amnesties, pardons and similar national measures that lead to impunity for crimes against humanity and other serious human rights abuses, such as torture, extrajudicial executions and "disappearances", contravene fundamental principles of international law. Authorities such as the UN Secretary-General, authoritative UN and regional bodies, and international tribunals have stated that there should be no amnesties or similar measures that afford impunity for crimes under international law and other serious human rights abuses.

The Algerian government has failed to issue invitations to UN experts who have long-standing requests to visit the country to conduct investigations, such as the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions and the UN Special Rapporteur on Torture. The signatory organizations call on the government to issue invitations to these experts without further delay. The government should also facilitate the visits of the Special Rapporteur on Violence Against Women and the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, both of which it has agreed to in principle but not yet scheduled.

The signatory organizations reiterate their call on the Algerian government to uphold the right of all victims of serious human rights abuses to truth, justice, and full reparation. The organizations believe that such guarantees are essential to any process of reconciliation. Regrettably, in most respects, the proposed law takes Algeria in the opposite direction by granting widespread impunity and shutting down efforts to investigate and even debate momentous events of the country's recent past.

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