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# ALGERIA

## @Executions after unfair trials: a travesty of justice

### Introduction

Over 300 death sentences have been imposed since the state of emergency was first declared in Algeria in February 1992. Twenty-six people have been executed by firing squad this year, the first executions to be carried out since 1989. Six people sentenced to death by military courts in 1992 were executed in January and February and 20 people sentenced to death by the special courts (*cours spéciales*) were executed in August and October 1993. Most of the death sentences have been passed by recently constituted special courts in trials which violate the most fundamental requirements of international law, including the right to be tried by independent, impartial and competent courts; the right of access of pre-trial detainees to their families, lawyers and independent medical care; the right to adequate time to prepare a defence; the right to be free from torture; the right not to be compelled to testify against oneself; the right to see evidence; the right to a public trial; and the right to appeal.

Moreover, these special courts in Algeria violate the most fundamental right of all, the right to life, by sentencing people to death after trials which are unfair at every stage of the proceedings. Until September 1993 all the death sentences imposed by the special courts known to have come to the Supreme Court for review had been upheld leaving as the only recourse a plea for clemency to the President of the *Haut Conseil d'Etat* (HCE), Higher State Council.

### Executions after unfair trials

In August 1993 the first executions of those sentenced by special courts were carried out. Seven people were executed on 31 August after pleas for clemency were rejected by the President of the HCE. Thirteen more were executed on 11 October. The families were not informed that their relatives were going to be executed, and were thus not able to see them before they were killed. Some of the lawyers were informed of the executions in advance, but they were not allowed to inform the families and were not able to see the detainees before they were executed to record their last wishes. Some parents only learned of their sons' executions from the national television news report later in the day.

The seven executed in August had been sentenced to death with 31 others (26 *in absentia*) by the Algiers special court on charges of having planned and carried out the bombing of Algiers airport in August 1992, during which nine people died and over 120 were injured. After their arrest some of them were shown on Algerian television admitting responsibility for the bombing. Some of the defendants were held in illegally prolonged incommunicado detention and all alleged severe torture at the hands of the police. They were found guilty on the basis of their own confessions which they denied in court as having been extracted under torture. At least one of the seven, Mansouri Meliani, who stated in court that he supported armed struggle against the Algerian state but opposed the killing of civilians, had refused to appeal to the President of the HCE for clemency. The 13 people executed on 11 October 1993 had been sentenced to death by the special courts of Algiers, Constantine and Oran in different trials.

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These executions after unfair trials are summary or arbitrary executions. The United Nations Commission on Human Rights has condemned summary or arbitrary executions as an "abhorrent practice...which represent a flagrant violation of the most fundamental right, the right to life". The most recent report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions emphasized that "trials leading to the imposition of capital punishment... should conform to the highest standards of independence, competence, objectivity and impartiality of the judges, and all safeguards and guarantees for a fair trial must be fully respected, in particular as regards the right to defence and the right to appeal and to seek pardon or commutation of the sentence".

Some of the rights violated in these cases are rights guaranteed in the Algerian Constitution or other Algerian laws. All of the human rights being violated are fundamental, internationally-recognized rights which Algeria solemnly pledged to guarantee when it ratified the International Covenant on Civil and Political Rights (ICCPR) in 1962 and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture) in 1989.

Amnesty International calls on the Algerian authorities not to carry out any further executions; to end trials in special courts; and for all those tried by special courts to be retried in accordance with internationally-recognized guarantees for fair trial. The United Nations Human Rights Committee recognizes that governments have a duty to combat terrorism, but "the measures taken to do so should not prejudice the enjoyment of the fundamental rights enshrined in the Covenant".

## Background Information

Following the cancellation of the second round of Algeria's first multi-party general election, a state of emergency was declared in Algeria in February 1992. Protests by members and supporters of the *Front Islamique du Salut*, FIS (Islamic Salvation Front), which had obtained the majority in the first round of the elections, resulted in mass arrests. Over 10,000 people were held under administrative detention without charge or trial in internment camps in the desert in the south of Algeria, and many others were brought to trial.

Between January and March 1992, over 70 people were shot dead by the police and the army, and over 30 members of the security forces were killed in clashes or in attacks by armed opposition groups. Since then there has been a widening of the cycle of violence by both the security forces and armed islamist opposition groups. According to official figures over 700 alleged opposition militants have been killed by the security forces, and over 140 civilians and more than 400 members of the security services have been killed by armed islamist opposition groups since the beginning of 1992. Unofficial sources suggest that the figures of those killed by both sides may be considerably higher.

During 1992 the main targets of the armed islamist opposition groups were members of the security forces, but since the renewal of the state of emergency in February 1993 the number of armed attacks against civilians has sharply increased: Over 100 of them have been killed since February 1993. Many of them were intellectuals who had criticized the political agenda of extremist Islam and had openly condemned terrorist activities by islamist opposition groups.

Amnesty International strongly condemns all deliberate killings of civilians by opposition groups and calls for such killings to cease immediately. The deliberate killing of civilians constitutes the ultimate

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form of human rights abuse which should not be tolerated, whether carried out by governments or by opposition groups aspiring to governmental powers.

Amnesty International has also condemned human rights violations committed by the security forces, such as torture and ill-treatment, unlawful killings and extrajudicial executions, administrative detention and unfair trials, and has called on the Algerian Government to take the necessary measures to put an end to these violations.

The organization recognizes the right and the responsibility of the Algerian Government to bring to justice those responsible for murders and other acts of violence, and is aware of the seriousness of the situation in Algeria. However, such a situation cannot justify the use of torture and unfair trials, and the death penalty which Amnesty International opposes in all cases.

## The anti-terrorist law

On 30 September 1992 the government introduced a new anti-terrorist law "relating to the struggle against subversion and terrorism" (*Décret législatif No 92-03 relatif à la lutte contre la subversion et le terrorisme*) which established three special courts in Algiers, Oran and Constantine to try those accused of "terrorist" activities. The decree increased the scope of the death penalty, lowered the age of criminal responsibility in such cases to 16 years, limited the right of appeal and broadened the definition of terrorist acts. Since the special courts started working in February 1993 more than 300 death sentences (over half *in absentia*) have been passed, most of them by the three special courts, but some also by the military court. The majority of the cases are awaiting review by the Supreme Court, but all those which have been reviewed so far have been confirmed.

The decree promulgating the terrorist offences under which the defendants are being tried is so vaguely worded that it does not give adequate warning of what conduct is prohibited and so broadly worded that it could lead to imprisonment for peaceful exercise of the right to freedom of expression.

## Legal concerns

The very creation of these special courts to replace ordinary courts is a matter of grave concern. Principle 5 of the Basic Principle on the Independence of the Judiciary states:

"Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or tribunals".

The trials in the special courts have violated international standards for fair trial at every stage of the proceedings: Decree 92-03 provides for secret and accelerated justice for those accused of "terrorist" offences. The law is retroactive (Article 42), inasmuch as any case already under instruction or awaiting trial for offences committed before the law was promulgated can be transferred to the special courts and

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thus be liable to incur increased penalties which did not apply at the time of the offence. Cases of people arrested as far back as 1990 have been transferred to the special courts, resulting in the imposition of death sentences. Such retroactive increases in penalties violate the fundamental principle common to all legal systems of *nulla poena sine lege* (no punishment without law), and Article 15 of the ICCPR, which may never be derogated from under any circumstances, which states in part:

"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed..."

The retroactive use of this law also violates Article 2 of the Algerian Penal Code which states:

*"La loi pénale n'est pas rétroactive, sauf si elle est moins rigoureuse"* (penal law is not retroactive, unless it is less severe).

The decree (Article 1) broadens the definition of "terrorist or subversive acts" to include offences liable to threaten state security, including reproducing or distributing "subversive" literature (Article 4). This provision is so vaguely worded that it does not make clear what is prohibited. This vagueness increases the risk that some people may be charged and tried even though there is not sufficient evidence that they have committed a specific and recognizably criminal act. Moreover, the prohibition of reproducing or distributing "subversive" literature could lead to the imprisonment of people who were peacefully exercising their right to freedom of expression under Article 19 of the ICCPR. The sentences for all offences are doubled, the death penalty applies to crimes previously punishable by life imprisonment.

## Pre-trial stages

This law reduces some important safeguards against human rights violations contained in Algerian law: the period of *garde à vue* (incommunicado) detention (when detainees are held by the police without access to their families or lawyers) is extended from a maximum of two days, renewable once, (double this period for offences against state security) to 12 days, in violation of Algeria's obligations under international law and standards. The Human Rights Committee has stated that even 10 days of incommunicado detention violates the ICCPR. Other international standards applicable to Algeria make clear that such lengthy incommunicado detention is prohibited: The United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that access to lawyers and to families may not be denied, even in exceptional cases, for more than a matter of days (Principles 15 to 19).

In practice even this maximum 12-day period is systematically breached as detainees are held incommunicado for several weeks, during which time they are routinely tortured. Confessions extracted under torture are used, often as the sole evidence, to convict those who are sentenced to death.

Of all the cases brought to the attention of Amnesty International when lawyers and detainees raised allegations of torture during incommunicado detention in court, no medical examination or investigation appears to have ever been ordered by the judge to establish the veracity of the allegations, even in cases

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where the detainees bore obvious marks of torture several weeks after their arrest, and when there was evidence that the period of incommunicado detention had been illegally prolonged. Confessions which are denied in court by the detainees as having been extracted under torture are consistently accepted by the judges and used as the basis for convictions. The failure to investigate these allegations of torture violates Article 13 of the Convention Against Torture, to which Algeria is a State Party, which states:

"Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities..."

The admission of such confessions violates Article 14 (3) (g) of the ICCPR prohibiting the compulsion of defendants to testify or confess guilt and Article 15 of the Convention Against Torture, which states:

"Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made".

Items seized by members of the security forces during searches do not have to be recorded and sealed (Article 21), thus making it difficult to establish the links between the item seized and the accused against whom these items are used as evidence of their guilt.

The *police judiciaire* (judiciary police) in charge of conducting the investigations operates under the control of the *Procureur Général* (General Prosecutor) of the special court (Article 19), and no longer under the control of the *Procureur de la République* (Prosecutor of the Republic). Therefore, the *Procureur Général* of the special court is in charge of controlling the judiciary police during the investigation, deciding under which jurisdiction the case falls (special court or ordinary court), prosecuting and requesting the penalty at the trial. This procedure does not ensure impartiality between the investigation and the trial.

## The right of defence curtailed

Article 14 (3) (b) of the ICCPR guarantees that everyone charged with a criminal offence has the right "to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing", but this right is denied at every stage of the proceedings before the special courts, where the detainees' right of defence is severely restricted. Lawyers are often not notified when their clients are brought before the investigating judge at the end of the period of incommunicado detention; often the hearing before the investigating judge takes place at the prison and not in the office of the investigating judge. Thus detainees do not have legal assistance at this first stage when detainees may either confirm their confessions to the police or deny them if these have been extracted under duress, and when breaches of procedures such as prolonged incommunicado detention and torture may be raised and a medical examination of the detainee can be requested.

The next stage in the procedure is the hearing before the *chambre de contrôle (de l'instruction)* (Article 27) of the special court, the chamber which decides if the case should be tried by the special court or by an ordinary court. There can be no appeal to the decision of the *chambre de contrôle* (Article 28). Several lawyers have stated that in some cases they were not notified that their clients were brought

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before the *chambre de contrôle*, and in other cases when they were present and raised allegations of torture of detainees in prolonged incommunicado detention, these were ignored by the judge. In the course of the court hearings, lawyers' requests for medical examination and mention of torture allegations are either dismissed by the judge on grounds that such matters should have been raised before the *chambre de contrôle*, even when the lawyer was not present, or ignored.

Lawyers only obtain their clients' files shortly before the trial, and are not allowed adjournments to study the files, even in cases when they are only appointed on the day of the hearing and thus have insufficient time to prepare the defence. Moreover, they only have access to part of their client's file, usually only the detainees' confessions before the police when the lawyer was not present, and are often unable to call defence witnesses because the presiding judge either refuses to call them or ignores the request and does not summon them. The United Nations Basic Principles on the Role of Lawyers provides: "It is the duty of the competent authorities to ensure lawyers' access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time" (Principle 21).

In March 1993 several lawyers were expelled from the special court and suspended for a period of three months, but their suspension was frozen following protests from the Bar Association. An amendment to Article 31 of Decree 92-03 in April 1993, states that lawyers may be expelled from the special courts and suspended for a period of up to one year if the court finds their behaviour objectionable. Scores of lawyers now refuse to plead before the special courts because of the constraints on the defence in these courts. This provision, together with the previous suspension of lawyers, gravely threatens the independence of lawyers and the right to defence. It is inconsistent with the obligations of the authorities under the United Nations Basic Principles on the Role of Lawyers (Principles 16 and 17) to ensure that lawyers "are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference" and to be free from threats.

## The trial stage

Article 14 (1) of the ICCPR guarantees everyone a public trial. However, this right is denied or severely limited at all stages of the proceedings in the special courts.

Article 32 of the decree states that trials in the special courts are public, but the court may decide that part of or whole debates be conducted *in camera*. However, none of the hearings in special courts are ever held in public, as entrance to the courtroom is restricted to lawyers and families of the detainees and Algerian journalists; members of the public and foreign journalists cannot attend the hearings. The composition of the courts is secret (Article 17); there is a penalty of up to five years' imprisonment for revealing any information which can lead to the identity of the president of the special court, the president of the *chambre de contrôle*, the assessors and the *Procureur Général*. The secret composition of the special courts makes it impossible to establish the neutrality of the magistrates in relation to the case or to the accused.

Article 14 (5) of the ICCPR guarantees the right to appeal against a criminal conviction and sentence. The decree, however, severely limits this right, and denies defendants the same right of appeal guaranteed to persons convicted of ordinary offences under Algerian law. There is no right of appeal but convictions

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may be reviewed by "cassation" by the Supreme Court, which only rules on alleged errors of procedure and does not reexamine the facts of the case. This limited form of appeal does not safeguard the right to defence of the accused. Requests for review must be submitted to the Supreme Court within eight days from the date of sentence and the statement by the defence lawyer detailing the procedural irregularities which would render the verdict null and void must be submitted within 20 days. The Supreme Court rules within two months, and if the verdict of the special court is annulled the case is sent back to the same special court "differently composed" or to another special court for retrial (Article 35). However, since the identity of the judges in the special courts is not known, it is not possible to establish if cases are sent back to the same special court. All the cases reviewed by the Supreme Court so far have been confirmed, including several death sentences.

## The violation of the right to life

Amnesty International is concerned that the death sentences have been imposed as a result of unfair trials which grossly violate international standards to which Algeria is a State Party.

Article 5 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty adopted by the United Nations Economic and Social Council (ECOSOC) states:

"Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial..."

Amnesty International unconditionally opposes the death penalty in all cases as the ultimate form of cruel, inhuman and degrading punishment and a violation of the right to life as proclaimed in the Universal Declaration of Human Rights.

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states:

"Every human being has the inherent right to life. This right shall be protected by law..."

Article 1 of the General Comment of the Human Rights Committee on Article 6 of the ICCPR states:

"The right to life enunciated in Article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation..."

## Recommendations



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Amnesty International calls on the Algerian Government:

1) To stop all executions.

2) To end trials in the special courts, where trials violate international standards for fair trial, and to retry those convicted by the special courts in trials in ordinary courts affording all the internationally-recognized guarantees for fair trial.

3) Ensure that in all trials:

a) detainees be allowed to fully exercise their right of defence and appeal;

b) confessions denied by the accused in court as having been extracted under duress are not used as evidence against the accused;

c) full and independent inquiries are carried out whenever there are allegations of torture or ill-treatment of detainees or coerced testimony;

These safeguards are especially important in cases where the defendants are accused of offences carrying the death penalty.

4) To amend the anti-terrorist decree to bring it into line with internationally-recognized human rights standards.