

# Algeria

## Submission to the UN Universal Periodic Review

First session of the UPR Working Group, 7-11 April 2008

In this submission Amnesty International provides information under sections B, C and D:

- Under section B, Amnesty International raises concern on discrimination against women, impunity of past human rights violations and the definition of terrorism.;
- In section C, we describe concerns related to human rights violations in the context of counter-terrorism, harassment of human rights defenders and violence against women;
- In section D, Amnesty International makes a number of recommendations in the areas of concerns listed.

### **B. Normative and institutional framework of the State**

The Algerian authorities have taken positive steps towards amending laws that discriminated against women as well as towards the abolition of the death penalty by reducing in 2006 the scope of offences punishable by death in the Penal Code.

#### **Discrimination against women**

The Algerian authorities have taken encouraging steps to end discrimination against women, by amending the Family Code and the Nationality Code in 2005. However, these steps do not fully address legal discrimination against women, which remains entrenched particularly in the Family Code.

Under the new Family Code, women are no longer legally required to obey their husbands and there is now an equal set of duties for both spouses. However, Article 30 of the Family Code prohibits marriage between a Muslim female and a non-Muslim male, whereas a Muslim man may marry a non-Muslim woman.

The 2005 amendments have brought further restrictions on the practice of polygamy, although the right of a man to marry more than one woman has been maintained in law. A woman still needs the presence of a *wali* (matrimonial tutor or guardian) at her marriage, although the *wali* can now be a person of her choice.

Under the new Family Code, the custody of children, in case of divorce, now falls first to the mother with a view to ensuring the best interests of the child. However, if the mother remarries, she loses the custody of her children.

The new Family Code also gives women more grounds to demand a divorce, for instance disagreement between the spouses or violation of the clauses of the marriage contract. A woman may now obtain a divorce without the consent of her husband by paying financial reparation (*khol'a*). Men are not obliged to pay financial reparation when requesting a divorce.

In the event of divorce, when the wife has been granted custody of the children, the father is now obliged to provide them with decent lodging. The mother has the right to the marital home until the execution of a judicial decision over housing. However, a woman has no right to the marital home in case of divorce if the spouses do not have children.

Inheritance has been left untouched by the 2005 amendments to the Family Code and daughters receive one part for every two parts received by sons.

#### **Impunity for serious human rights abuses committed in the internal conflict in the 1990s**

Algeria continues to be affected by the grim legacy of the internal conflict and an overwhelming lack of investigations into the crimes committed by all parties to the conflict. These include large-scale unlawful killings, including extra-judicial executions, abductions, enforced disappearances, torture, including rape, and other ill-treatment, and secret and arbitrary detentions. Some of these crimes may constitute crimes against humanity under international law.

The Algerian authorities introduced blanket amnesty measures in 2006, as part of their policy of “peace and national reconciliation”, with the stated aim of turning the page on the conflict. The Decree Implementing the Charter for Peace and National Reconciliation (Law 06-01), adopted on 28 February 2006, declared that any complaint against the security forces, and those who acted in conjunction with them, would be inadmissible in courts, so conferring complete immunity for the perpetrators of thousands of extra-judicial executions, enforced disappearances and widespread torture. Moreover, the same Decree threatened with imprisonment those who speak out about abuses by the security forces.

The Decree also widened the scope of measures adopted in 1999 and 2000, granting exemption from prosecution to members of armed groups who surrendered to the authorities within a stipulated six-month period or were in prison and who were not responsible for “acts of collective massacres, rape, or the use of explosives in public places”, stating that this served to end fighting by armed groups. The Decree provides insufficient safeguards to ensure that those who have committed serious crimes, for example killings of civilians, will be prosecuted. According to official statements, up to 300 armed group members had surrendered by the deadline, but no details have been provided so far as to how many were exempted from prosecution and by what process. Moreover, further official statements have suggested that those who give themselves up even after the six-month deadline would benefit from similar measures.

The Decree also provided for the release under an amnesty of those detained or imprisoned for alleged involvement in terrorist activities except for collective killings, rape and bomb attacks. According to the Algerian delegation to the UN Human Rights Committee session in October 2007, some 2,500 detainees benefited from amnesty measures under the Decree. However, their names and the process for determining their eligibility have not been published. According to Amnesty International’s information, some detainees eligible for release under the Decree are still detained, while others were released although they were not entitled to be released under the Decree, suggesting arbitrariness in the application of the Decree.

For victims of human rights abuses by armed groups, and for their relatives, there is little evidence that the Algerian authorities have taken the necessary steps to ensure that truth is achieved and justice done. Victims of sexual violence at the hands of armed groups have suffered in particular from a lack of specific measures of rehabilitation, the social stigma attached to rape and other sexual violence, and a lack of information regarding prosecution of armed group members on sexual violence charges.

The same Decree introduces measures of financial support for the relatives of those who were forcibly disappeared in the context of the internal conflict. However, financial payments are conditional on families first obtaining a death certificate for their disappeared relative, a measure that many oppose for fear it would prevent them from obtaining the truth about the fate of their loved ones. Associations of the families of the disappeared also see this measure as a further attempt by the authorities to silence their legitimate demands for truth and justice and to evade responsibility for the enforced disappearances perpetrated following the arrests of thousands of persons, mainly men, by members of the security forces in the 1990s. Previous measures aimed at resolving the issue of enforced disappearances have not provided satisfactory answers in even a single case of such human rights abuses. Complaints filed by families to the judicial authorities have not led to full investigations or prosecution of alleged perpetrators. Over the years, some families have received information from the authorities, including that their loved ones were killed while in the ranks of armed groups, or that they had escaped from state custody, but the information provided was unsubstantiated or contradictory. The authorities have stated that more than 6,000 cases are under review for financial compensation, but have not published their names nor investigated the circumstances of their enforced disappearance.

Moreover, the Algerian authorities have failed to cooperate with UN human rights mechanisms. The Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Working Group on enforced or involuntary disappearances have all been unable

to conduct investigations in Algeria since they first requested access to the country, in 1997, 1998 and 2000, respectively.

### **Broad definition of terrorism**

Algerian law retains a broad definition of terrorism, which was initially introduced under emergency legislation in 1992 and later incorporated into the Penal Code. The definition of terrorist offences is so broad as to allow for the criminalization of the peaceful exercise of certain civil and political rights. According to Article 87 *bis* of the Penal Code, the definition of terrorism includes offences liable to threaten state security, territorial integrity and the normal functioning of institutions by acts such as endangering life or property; hindering freedom of movement; impeding public authorities; damaging national or republican symbols; harming the environment, means of communication or means of transport; impeding the functioning of public institutions; and hindering free exercise of religion and public freedoms. These vague provisions have been interpreted to include the peaceful exercise of civil and political rights.

### **C. Implementation of human rights obligations**

The level of violence has decreased by comparison with the 1990s, when Algeria was gripped by internal conflict and when as many as 200,000 people are believed to have been killed at the hands of both armed groups and government security forces. However, there are still reports of unlawful killings. In 2007, civilians were deliberately targeted and killed in bomb attacks for which an armed group, the Salafist Group for Preaching and Combat (renamed as the al-Qa'ida Organization in the Islamic Maghreb in January 2007), claimed responsibility. There have also been killings of alleged armed group members by Algerian military forces, including some carried out in the context of search operations and attacks which may have been extra-judicial executions.

#### **Secret detentions and torture in the context of the fight against terrorism**

A branch of the security forces, the Department for Information and Security (*Département du Renseignement et de la Sécurité*, DRS, also known as the Military Security), continues to be responsible for secret detentions and to commit torture with impunity. An intelligence agency specializing in interrogating individuals believed to have information about terrorist activities, the DRS can arrest persons believed to possess information about armed groups in Algeria or about alleged terrorist activities abroad. A body of evidence gathered by human rights activists, victims of human rights violations and their families points to the responsibility of DRS agents for systematic torture, large-scale extrajudicial executions and enforced disappearances of alleged sympathizers of Islamist groups in the 1990s.

In most cases, arrests are reportedly carried out by plain-clothes officers of the DRS who do not identify themselves and do not inform the suspects or their families of the reasons for their arrest. Once in custody, detainees are not informed of their right to communicate immediately with their families, or to a medical examination at the end of *garde à vue*, which by law can last up to 12 days. In practice, however, detainees are sometimes held in *garde à vue* for months or even years. The families of those arrested are generally not informed of detentions by the DRS, or transfers to DRS custody, or of the place of detention, despite their repeated attempts to establish the whereabouts of their loved ones. While detainees are held by the DRS, families are not able to communicate with them or to visit them. These practices violate Article 51 *bis* of the Algerian Code of Criminal Procedure, which states that the arresting officers have to inform anyone who is taken into detention of their rights during *garde à vue*. The following article (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. Families and lawyers of individuals thought to be held by the DRS who have contacted the public prosecutor to inquire about them report that they were unable to receive official confirmation that the individuals had been taken into detention, indicating a lack of oversight of detention in terrorism-related cases by the public prosecutor.

Testimonies from ex-DRS detainees suggest that suspects are usually held in army barracks operated by the DRS, such as the Antar barracks in the Hydra district of Algiers. These are not officially recognized places of detention and are not inspected by the public prosecutor, or other bodies independent of the military.

It is when detainees are held incommunicado that they are most at risk of torture and other ill-treatment. Amnesty International has received dozens of allegations of torture and ill-treatment of detainees held by the DRS. The most frequently reported methods 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 being undressed and humiliated, beaten on the soles of their feet (a method known as *falaka*), suspended by the arms from the ceiling for prolonged periods, or 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 or confessions 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 alleged to have links with terrorism. Detainees are then usually forced to sign an interrogation report, which often contains their "confession" to involvement with armed groups or international terrorism. Sometimes interrogation reports contain declarations that the detainees were well treated in detention.

Such detainees invariably report that they have not been examined by a doctor at the end of the *garde à vue*, nor been informed of this right, in contravention of Article 51 *bis* of the Code of Criminal Procedure. In addition, reports of torture or other ill-treatment are not usually investigated and the perpetrators brought to justice, as required under the law. Detainees have sometimes reported that they were threatened by DRS officials that they should not disclose how they were treated during *garde à vue*.

Complaints of detainees about torture or ill-treatment appear not to be investigated and therefore perpetrators are not held accountable. The Algerian authorities have stated on several occasions that security officers responsible for abuses have been brought to justice, but they have failed to provide relevant details, including names, any investigations carried out, and results of such investigations including prosecutions.

Defendants report that when they have complained about ill-treatment to the public prosecutor, to the first examining judge or in court, their allegations were dismissed without further investigation. Most defendants accused of terrorist activities are not assisted by a lawyer when they are first brought before a judge, even though this right is enshrined in Article 100 of the Code of Criminal Procedure.

In 2004, the Algerian Penal Code was amended to define torture explicitly as a crime. However, Amnesty International is not aware of any case where a DRS or other security officer has been prosecuted for alleged acts of torture or other ill-treatment, before or after the 2004 amendment.

#### **Harassment of human rights defenders**

The right to freedom of expression was further restricted under amendments to the Penal Code in 2001 (Law 01-09 of 26 June 2001), which prescribed prison terms for the offence of defamation. Using this law, the authorities have brought prosecutions against journalists working in privately-owned media and human rights defenders. The 2006 Decree Implementing the Charter for Peace and National Reconciliation further threatens with imprisonment those who denounce or debate abuses by the security forces.

Human rights lawyer Amine Sidhoum was charged in September 2006 with bringing the judiciary into disrepute due to quotes attributed to him in a newspaper article in 2004. His trial, set for 25 November 2007, has been postponed to January 2008. Amine Sidhoum was previously subjected to judicial harassment for his work to defend the rights of detainees.

Mohamed Smain, President of the Relizane branch of the Algerian League for the Defence of Human Rights, a human rights non-governmental organisation, was convicted on appeal of defaming nine militiamen in January 2002 and sentenced to one year's imprisonment, a fine of 5,000 dinars and damages of 30,000 dinars for each militiaman, for having alleged that the bodies of some 20 victims of enforced disappearance, carried out by local state-armed militia, had been buried at a mass grave site in Sidi Mohamed Benaouda. The bodies were reportedly exhumed and relocated just after the site was discovered. The Supreme Court ruled in mid-2007 that he should be re-tried. On 27 October 2007, the Court of Relizane confirmed its original decision to convict him of "denouncing imaginary crimes" and sentenced him to two months' imprisonment, a fine of 5,000 dinars and damages of 10,000 dinars. Mohamed Smain is appealing the decision to the Supreme Court.

Hafnaoui Ghoul, a human rights activist and journalist responsible for the Djelfa branch of the Algerian League for the Defence of Human Rights, was imprisoned on 24 May 2004 because he criticized local officials in the Algerian press. A series of defamation charges were brought against him by local officials after he publicized concerns about human rights violations and alleged corruption and public mismanagement in the region of Djelfa. He was released on 24 November 2004. On 8 September 2007, he was notified of further defamation charges brought against him by the chief of the Djelfa *gendarmerie* station and is now under judicial control.

#### **Violence against women**

Women remain vulnerable to violence by non-state actors, including domestic violence. The National Institute for Public Health has initiated major studies on violence against women in Algeria since December 2002, which shows that acts of violence by husbands against their wife remain prevalent. There are no specific legal provisions criminalizing domestic violence, including marital rape.

#### **D. Recommendations**

The Algerian authorities must:

- Repeal or amend laws which still discriminate against women in order to ensure equality between women and men and criminalize offences related to domestic violence, including marital rape;
- Repeal or amend legal provisions on terrorism-related offences which violate international law, including the broad definition of terrorism;
- Repeal legal provisions introduced in Law 06-01 of February 2006 which prevent courts from investigating complaints against the security forces and those who act in concert with them, and which criminalizes free expression and debate about the conduct of the security forces;
- Open full, independent and impartial investigations into all cases of enforced disappearance, secret detention and torture which are brought to their attention and bring to justice those responsible for such human rights violations;
- Take immediate steps to ensure that officers of the DRS, who routinely violate legal safeguards in arrest and detention, no longer carry out such functions and are no longer allowed to exercise judicial police functions;
- Reform legislation to ensure that all detainees have access to legal counsel at all stages of the judicial process, including during detention, interrogation and preliminary investigations;
- Ensure that any statement which is established to have been made as a result of torture or ill-treatment is not invoked as evidence in any proceedings, except against a person accused of torture or ill-treatment, and introduce legal safeguards to this effect;
- Ensure that human rights defenders can carry out their work without fear of intimidation.

**Appendix: Amnesty International documents for further reference**

- Algeria: Briefing to the Human Rights Committee (MDE 28/017/2007),
- Unrestrained powers: Torture by Algeria's Military Security (MDE 28/004/2006)
- Amnesty International Annual Report entries 2006-2007