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Restore Civil Liberties

With State of Emergency Over, Amend Laws to Restore Rights

April 6, 2011

(New York) - Algerian authorities have taken a step in the right direction by lifting a state of emergency, but the government still needs to restore basic civil liberties, Human Rights Watch said today. To accomplish that, the government needs to amend numerous repressive laws and end various arbitrary practices that have no legal basis.

The decision on February 24, 2011, to rescind the state of emergency decreed in February 1992 set the groundwork because it had served as a convenient pretext for authorities to suppress civil liberties, Human Rights Watch said. But the authorities continue to restrict such basic rights as the freedom of assembly, among others. These rights are nevertheless enshrined in Algeria's constitution, which says that "Citizens are guaranteed freedom of expression, association, and assembly" (Article 41).

"Lifting the state of emergency has had very little impact on civil liberties because a whole range of laws is on the books that can be just as repressive, or applied in a repressive manner," said Sarah Leah Whitson, Middle East and North Africa director at Human Rights Watch. "The Algerian authorities need to repeal or amend these laws and to put a halt to arbitrary abusive practices that have no legal basis whatsoever."

Freedom of Assembly

Freedom of Assembly is still stifled in Algiers, and inconsistently and selectively observed in the provinces, Human Rights Watch said.

On April 2, 2011, the Algerian authorities blocked a demonstration by the National Coalition for Change and Democracy / Political Parties branch in Algiers, on the basis of a June 2001 order, whose text has never been made public. The ruling prohibited rallies in Algiers until further notice. The authorities have used the law since February to prevent all demonstrations in Algiers by the Coalition, among others.

The right to assemble peacefully is protected by the International Covenant on Civil and Political Rights, ratified by Algeria. Article 21 prohibits any restrictions on the right to assemble with the exception of those "[...] imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others." The right to assemble is also guaranteed in Article 11 of the African Charter on Human and Peoples' Rights, which Algeria has also ratified.

"The ban on demonstrations in Algiers, because of its sweeping nature and open-ended duration, robs Algerians of their right to assemble," Whitson said.

Even when the state of emergency was in force, moreover, Algerian law did not allow authorities to order an open-ended ban on all demonstrations in any part of its territory, or nationwide. By imposing such a ban, Algerian authorities rob a fundamental right, granted by article 41 of the nation's constitution, of all practical meaning.

This ban is not in force outside the capital city, but Algerian law still requires prior authorization for any public demonstration, under Law no. 91-19 Governing Public Meetings and Demonstrations (amending Law 89-28), which is very seldom granted to groups critical of the current authorities.

Demonstrations in the provinces are tolerated at times even when they do not obtain prior approval. In other instances, attempts to demonstrate in the provinces have been brutally repressed, and organizers arrested.

Distributing Fliers

Dalila Touat, a representative of the National Committee to Defend the Rights of the Unemployed in Mostaganem wilaya (province), was arrested on March 16 in the city of Mostaganem, 365 kilometers west of Algiers, and charged with violating Article 100 of the criminal code, which prohibits "Any direct instigation [...], by distributing written matter, of an unarmed gathering," and for handing out fliers calling for a peaceful rally to defend the rights of the unemployed. Mrs. Touat told Human Rights Watch what happened:

"Some policemen in civilian dress stopped me as I was on my way to the post office. They asked me if I was the one who had handed out fliers the day before. I said yes. Then I was taken to the police station where [...] they informed me I was being charged with 'instigating an illegal unarmed gathering and distributing illegal fliers.'

Then they asked me all kinds of questions: college, family, political preferences, who were the members of the committee for the unemployed, how we financed our activities, how I formed the committee for the unemployed and what our purpose was, etc. Then I was taken to the office of the provincial security chief, who asked me what it was I wanted, and why I was handing out these fliers - because 'the nation is going through difficult times and the current situation is not good.'

I defended myself, saying that I had been unemployed for eight years and all I was doing was peacefully campaigning to defend my most basic rights."

Mrs. Touat was held overnight and brought before Mostaganem's public prosecutor the next day. There she received a summons to appear on April 28, for a hearing on her case, and was informed of the charges she was facing. She risks up to one year in prison if convicted.

Public meetings

The repressive use of laws has also been used to interfere with public meetings by civil society groups perceived as critical of the authorities.

Law 91-19 requires that "A receipt is to be immediately presented [...]" after a group applies to hold a meeting. In practice, it is often only provided long after the application is submitted, Human Rights Watch said, preventing groups from completing meeting arrangements.

In one recent instance, the National Coalition for Change and Democracy-Barakat (CNCD-Barakat), a movement formed of several civil society organizations calling for political reforms, organized a public gathering on March 25 in Algiers.

"We left the application at the provincial offices over 15 days before the meeting date," said Rachid Malaoui, president of the Independent National Union of Public Employees, a CNCD-Barakat member. "But we only got the receipt - the receipt that authorizes the meeting to be held - two days before, which caused us a lot of problems because we couldn't reserve the meeting room without it. It also prevented us from being able to publicize the event properly. Obviously the authorities wanted it that way."

Article 43 of the Constitution states, "The state encourages the flourishing of civil society." Lifting the state of emergency should give Algerian authorities the opportunity and the impetus to clarify their policy with respect to

civil society, its growth and activities, Human Rights Watch said.

"Civil society is weakened when it is obliged to submit to arbitrary practices on the part of authorities," Whitson said. "Most organizations perceived as critical of the government don't even try to get authorization to assemble anymore, knowing they will be refused, or to notify authorities of public meetings. So they meet instead in semi-secrecy, and hold protests without authorization."

Background on the State of Emergency

The government that decreed the state of emergency on February 9, 1992, had come to power following a coup the month before. Those in power forced President Chadli Benjedid to resign and halted elections that would have given a parliamentary majority to the Islamic Salvation Front, an Islamist party that had led in the first round of elections.

The state of emergency was extended indefinitely on February 6, 1993, disregarding required constitutional procedure and in violation of the constitutional provision that a state of emergency must be of limited duration. It remained in effect for 17 more years, with the fight against terrorism as the official justification.

The state of emergency granted authorities extraordinary powers, such as the ability to detain suspects without charge. It gave to the army the prerogatives of the judicial police and made it possible to order "the temporary closing of theaters and meeting spaces of any kind, and to prohibit any demonstration likely to disturb public order and tranquility" (Article 7).

After the elections were cancelled and the Islamist party banned, Algeria was wracked by internal conflict that caused between 100,000 and 200,000 deaths, the majority of them civilians, over the course of the 1990's.

On February 24, 2011, with demonstrations across the country and other Arab nations convulsed by protests, the Algerian authorities lifted the state of emergency.

Measures Yet to Be Taken

Algeria should amend its legislation for demonstrations and public meetings, specifically to conform to international norms concerning the right to assemble, Human Rights Watch said.

Law 91-19 requires organizers of public demonstrations to submit a request for authorization eight days before the event.

Algeria should establish a process of prior notification - not prior authorization - for public demonstrations. The law should be amended to limit the authorities' discretion to prohibit demonstrations, requiring them, when prohibiting one, to justify their decision in a precise, politically neutral, and clearly articulated manner.

The law should require authorities to communicate rapidly the reasons for any rejection to organizers of demonstrations, and guarantee their right to appeal within a reasonable time period and in an appropriate way before an impartial court.

Law 91-19 also applies to public meetings. In this case the process of notification, not authorization, is applicable as well, even if authorities use the receipt they are to provide after being notified of the planned meeting as, de facto, a kind of official authorization. Moreover, the law allows officials to ban a meeting "in the event it poses the real possibility of disturbing public order, or it very clearly appears that the real purpose of the meeting constitutes a danger to the protection of public order" (Article 6a).

To protect the right to hold meetings, the law should be amended to restrain the authorities' arbitrary power and compel them to base any prohibition of these meetings on criteria that are precisely defined, specific, clearly articulated, and legitimate in intent. Moreover, the fact that these meetings are held in enclosed spaces should set the bar even higher for authorities to justify prohibiting a meeting, particularly when they base their decision on "public order" grounds.

"Lifting the state of emergency was the first step," Whitson said. "The next and harder step is to amend laws that violate the basic rights of Algerians, and to see that the authorities put these changes into practice."

