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Vedlagt fremsendes til underretning UNHCRs Guidelines i relation til algerske
asylansøgere modtaget den 3. december 1997 fra FN-missionen Genève.

P.M.V

E.B.


Henrik Lange



UNHCR Memorandum

A/To: All Directors of Regional Bureaux and Regional Legal Advisers
(see list below)

De/From: D. McNamara, Director, Division of International Protection

S. Bari, Director, Regional Bureau for CASWANAME

Our Ref.: Memo/97/518

Date: 21 November 1997

Objet/Subject: Guidelines relating to Algerian asylum-seekers

In view of the increasing numbers of Algerian asylum-seekers in various countries and the considerable number of requests from Branch Offices for guidance to assess their claims, it was felt necessary to update the existing Guidelines relating to Algerian asylum-seekers. The updated version is attached hereto.

These Guidelines are aimed at assisting both governments and non-governmental agencies dealing with asylum-seekers.

In light of the changing political scene in Algeria, these Guidelines should be considered as interim, and will be modified as and when circumstances so warrant.

It would be appreciated if the concerned colleagues at Headquarters and in Branch Offices could kindly share these Guidelines with their government interlocutors, as necessary, and with interested non-government bodies.

Best regards.

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Doudou-Kiadila, El Ouali, Ghoul, Fortin, Idowu, Menikdiwela, Mori H, Petersen,
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CC: Abdel Nabi, Bronee, Corliss, Djamali, Domzalski, Feiler, Karago, Kingsley-Nyinah,
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ALGERIET (2)

Guidelines relating to the Eligibility of Algerian Asylum-seekers (Public domain paper)

1. Introduction

- 1.1 Over the last few years increasing numbers of Algerians have left their home country, due to the tragic and violent events which have been unfolding there, to seek asylum in neighbouring countries or elsewhere, mainly in Europe. In a situation where status determination practices vary greatly according to the country of arrival, UNHCR is increasingly called upon to provide advice with regard to the eligibility for refugee status and asylum of individuals and groups of Algerian asylum-seekers.
- 1.2 This paper is meant to provide general guidelines which, it is hoped, will facilitate the determination of the need for international protection of Algerian asylum-seekers. It is obviously not exhaustive in covering all situations which may arise in practice, and, therefore, it is not meant to be used as a blueprint for determining each individual case, which should, as a matter of normal refugee law practice, be considered on its own merits. To facilitate this task, attached, as an annex to these guidelines, is a short account of the major developments in Algeria between 1988 and 1997 which was prepared on the basis of information received from various public domain sources.
- 1.3 In view of the rapidly developing situation in Algeria these guidelines will be updated as and when required.

2. Categories of Algerian asylum-seekers

- 2.1.1. For the purpose of the present guidelines Algerian asylum-seekers have been divided into the following three main categories:
 - A) those who claim persecution by Algerian Government forces for being actual or perceived members and/or sympathisers of Islamic groups/parties;
 - B) those who claim to be threatened by militant Islamic groups because of their real or alleged support to the Government;
 - C) women adopting a life style which is not compatible with the Islamic fundamentalist code of conduct;
- 2.1.2. Apart from the above categories there are also Algerians who claim fear of persecution on the ground of ethnic origin or otherwise.(1)

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Asylum-seekers who claim persecution by Algerian Government forces.

2.1.3. The asylum-seekers who claim persecution by Algerian Government forces may be divided into the following three main groups:

a) Moderate Islamic groups/parties such as Hamas, now **Society of Peace**, and **En-Nahda** (not to be confused with movements of the same name in other countries) which have maintained a dialogue with the Government.

b) The **Front Islamique de Salut (FIS)**. As the FIS is now an outlawed party, its actual or perceived active supporters are considered to have violated not only the state of emergency laws, but also the Algerian legislation concerning political parties.

c) The militant wing of the Islamic movement in Algeria which consists, mainly, of three factions, the **MIA (Mouvement Islamique Arme')**, the **GIA (Groupe Islamique Arme')** and the **FIDA (Front Islamique de Jihad Arme')**. The latter group has been active in the assassinations of intellectuals and other members of the elite. One of their victims in late January 1997 was Abdulhaq Benhamouda, Secretary-General of the **Central Trade Union Confederation**, an important political figure close to President Zeroual and who played a major role in the 1995 presidential elections.

d) Among Algerian asylum-seekers claiming persecution by the government there are young men claiming refugee status on the grounds of being either deserters or draft evaders.

B. Asylum-seekers who claim fear of persecution by militant "Islamic" groups

2.1.4. This group comprises members of the Government, administration, security forces, the judiciary, and intellectuals who support or who are perceived to support a secular form of government. The term "francophone" is widely used to describe this group. The more "well known" a person is, the more privileged his/her social status is, the more "outspoken" the person has been, the more at risk he/she can be. Hence, certain professions such as members of the security forces, judges, journalists, artists, university and school teachers encounter a higher risk. While the performance of such professions carries certain risks, in the Algerian context, those risks are seriously aggravated by the mere fact of being a civil servant or in the stream of modernity.

2.1.5. Apart from the above, included in this category may be members of moderate Islamic parties such as Hamas and En-Nahda who

maintained dialogue with the government, and can therefore be targeted by radical militant groups such as the GIA and MIA.

C. Women as a specific group of asylum-seekers

- 2.1.6. Among other developments during the first half of 1995 was a significant increase in the number of women assassinated, particularly those not following the Islamic fundamentalist "code of conduct" (as a matter of fact, over eight such women were assassinated during the month of March 1995 alone). This has been highlighted by the international media as well as by international human rights organizations. It is noteworthy that women intellectuals (teachers, journalists, civil servants, etc), and wives of government officials encounter a particularly high risk of being persecuted by the militant Islamic groups. Therefore, it has been deemed appropriate to consider this vulnerable group of persons as a separate category of asylum-seekers.

3. Eligibility for refugee status of Algerian asylum-seekers

A. Asylum-seekers who claim persecution by Algerian Government forces

- 3.1.1. a) Members of moderate Islamic parties such as Hamas (now Society of Peace) and En-Nahda are not often targeted by Government forces and, therefore, their fear of persecution by the latter is, in principle, not likely to be well-founded, although of course there will always be a need for individual case assessment.
- 3.1.2. b) Persons known to be or perceived as active supporters of the FIS may have a well-founded fear of persecution. Normally, the participation in demonstrations does not justify the granting of refugee status or asylum unless other elements are involved in the case. Nevertheless, persons found to have distributed anti-Government leaflets, posters, etc. in favour of radical Islamic movements would risk to be perceived by the Government as active supporters of those movements and may, therefore, be exposed to serious difficulties including imprisonment. This would create a presumption in favour of status to be tested against the individual facts and subject to an asylum-seeker not having committed crimes against humanity or serious non-political crimes outside the country of refuge, and hence, fall under the exclusion clauses contained in article 1 F (a), (b) and (c).
- 3.1.3. Meanwhile, passive members or sympathisers of the FIS are not likely to be targeted. In addition, although cases of ill-treatment of relatives, friends, neighbours or even bystanders who have witnessed ill-treatment have been reported, nevertheless, families of

persons who have been targeted are, normally, not targeted themselves

3.1.4. c) Militant members of GIA, MIA and FIDA are clearly targeted by Government forces. Following their participation in attacks on security forces and in assassinations of political opponents as well as persons not involved in political activities, many members of these groups have been sentenced to death by "special courts". However, it could be assumed that members of such groups are likely to fall under the exclusion clauses of the 1951 Refugee Convention. It should be noted, nonetheless, that membership of an organization which advocates or practises violence is not as such sufficient to exclude a person from refugee status. The applicant would however, be excluded if, in addition to his/her association, there are serious reasons for considering that he/she had direct responsibility for and/or was actively associated with acts, albeit committed by others, which were of such a nature as to fall within the scope of an exclusion provision of the refugee instruments.

3.1.5. d) Desertion and draft evasion are normally legally punishable crimes. The mere fact of being deserter or a draft evader does not qualify a person for refugee status, unless other serious elements, e.g. harsh or discriminatory punishment, inhumane or degrading treatment, are involved. In the context of Algeria, UNHCR is not aware of any cases where excessive or discriminatory punishment and/or inhumane or degrading treatment has been applied vis-à-vis deserters and/or draft evaders. Therefore, Algerians claiming persecution on the mere ground of being deserters or draft evaders do not normally qualify for refugee status, unless other elements are involved in the case, as indicated in paragraphs 167-174 of the UNHCR's Handbook on Procedures and Criteria for the Determination of Refugee Status refer).

B. Asylum-seekers who claim fear of persecution by militant "Islamic" groups

3.1.6. With regard to persons claiming persecution by non-State agents, an essential criterion against which to assess the need for international protection is the absence of effective national protection against persecution, i.e., in a situation whereby the Government is either unable or unwilling to ensure effective protection to those targeted by non-Government entities. In the context of Algeria, it is UNHCR's view that asylum-seekers who credibly claim fear for their life or basic freedoms by militant Islamic groups should normally qualify for refugee status.

3.1.7. The asylum-seeker may, however, be in a country where the Government does not recognize persecution by non-State agents as

a basis for a valid claim. Therefore, persons who, in our judgement, would qualify for refugee status according to the above criteria, but who are nevertheless not granted such a status by the examining State should not be returned to Algeria. Rather they should be permitted to remain and enjoy the protection they require as well as basic socio-economic rights, preferably through the granting of a clearly defined alternative status.

C. Women as a specific group of asylum-seekers

- 3.1.8. The mere fact of not following the Islamic fundamentalist code of conduct may place women in a particular social group and/or can be considered an expression of an imputed political opinion whereby such women may be identified as supporting the Algerian authorities against the Islamic fundamentalists. Therefore, women adopting a "western life style" and not following the Islamic fundamentalist code of conduct may well be exposed to persecution on account of imputed political, religious opinion or membership of a particular social group. Hence, claims of women who credibly claim fear of persecution by Islamic groups on the ground of actions or behaviour inconsistent with the Islamic fundamentalist code of conduct should, in principle, be considered as fulfilling the inclusion provisions contained in Article 1 A (2) of the 1951 Convention as well as in para 6 of UNHCR Statute, and should, therefore, be granted refugee status.

4. On some notions

A. Internal flight alternative

The spread of violence which has cost the lives of some 60,000 persons, of various backgrounds and profiles, in various parts of Algeria, including the capital, Algiers, is a clear indication of the high mobility of various armed groups and of their ability to reach their potential victims in any part of the country. The notion of an internal flight alternative should not accordingly be applied in the context of Algeria.

B. Return of rejected cases

As regards return of rejected asylum-seekers to Algeria, UNHCR is not opposed to the return of such persons, provided their cases have been through full and fair asylum procedure whereby refugee criteria, as UNHCR understands them, have been properly applied.

ANNEX

Background information

1988

1. The volatile character of the political situation in Algeria became evident in 1988 when demonstrations organised in larger cities demanding a change of the government and a more prominent role of Islam in the Algerian society turned into riots.

1992

2. The political and security situation further deteriorated in January 1992 following the resignation of President Chadli when the second round of the parliamentary elections was cancelled and a five-member High State Committee (HSC) was created to act as Algeria's collective presidency.

1994

3. Contrary to the wish of some Algerian groups that the army should crush the Islamic uprising, Mr. Zeroual, a former defence minister who became the president in February 1994, quickly adopted a conciliatory line vis-à-vis the Islamic parties, including the outlawed FIS, and even freed some detained Islamic leaders. This did not, however, satisfy the radical Islamic groups. The number of assassinations continued to grow, reaching an average of 230 to 250 killings per week during the holy month of Ramadhan (March) 1994.
4. In March 1994, all embassies in Algiers decreased their staff to the very minimum and most of them moved their residences to Hotel "Al-Jazair" which was considered a more protected and safe place. As far as the UN is concerned, Phase IV of the security plan was put into effect, and most of the international staff was evacuated for security reasons. The rest moved their residences as well as offices to the above mentioned hotel.
5. By September 1994 serious efforts were made by President Zeroual to bring to an end the wave of violence through attempts to start peace talks between various parties. However, the political and security situation deteriorated further during the last three months of 1994. Assassinations and clashes between the armed Islamic groups and the Algerian security forces continued causing the deaths of more people.

6. The "Groupe Islamique Arme" marked Christmas by hijacking a French plane in Algiers airport. The hijacking ended without major casualties except for the killing of the hijackers themselves. Although the hijackers did not manage to achieve their objective, reportedly to blow up the plane over a French town, the mere fact of their being able to hijack a plane in Algiers airport was indicative of their ability to infiltrate a sensitive governmental institution such as the international airport.

• 1995

7. The month January 1995 was particularly violent. It started with the setting of a passenger train on fire in the vicinity of Blida and ended with a powerful car bomb which exploded in central Algiers killing 42 and injuring 260 persons.
8. Among other developments in January 1995 was the meeting of eight Algerian opposition parties which took place in Sant Egidio, Italy, and which ended with a political platform signed by all the eight parties. While the Sant Egidio meeting was condemned by the Algerian Presidency in a press release dated 7 January 1995, the "Groupe Islamique Arme" expressed its readiness to stop the war if the authorities accepted the Saint Egidio document.
9. The months of February, which coincided with the Holy month of Ramadhan, and March 1995 were quite violent. Apart from the regular assassinations of civilians and the frequent clashes between Algerian security forces and armed Islamic groups, there was a major clash in Ain Defla west of Algiers which ended on 26 March. During this fight, over one thousand GIA militants (over two thousand five hundred, as per Al-Hayat newspaper issued in London) were reportedly killed. In addition, these two months have witnessed the following developments:
 - a. serious attempts on the part of the FIS to distance itself from violence. The GIA accused the AIS (Armee' Islamique de Salut) of seeking an agreement with the Government and threatened to execute all who attempted negotiations with the Algerian authorities. Furthermore, the GIA has accused the AIS of providing information to the Government that facilitated the latter military operation in Ain Defla;
 - b. there was a significant increase in the numbers of women assassinated, particularly those not following the Islamic fundamentalist code and adopting a "western life style". This aspect of violence continued to be highlighted by the international media. International human rights organizations also expressed their concern about this new development;

c. intensive attacks on educational institutions (primarily, secondary and technical/vocational schools, institutions and university centres). It is believed that these attacks, which were aimed at destroying the educational physical infrastructure, represent one of the major directions of the armed struggle of the Islamic fundamentalists against the secular government and against secular education which is a sign of that government;

d. significant increase in the number of journalists assassinated;

1996-beginning 1997

10. The political and security situation continued to deteriorate in 1996 with frequent clashes between the government forces and the armed Islamic groups, on the one hand, and increased number of assassinations carried out in various parts of the country, on the other hand. The last months of 1996 as well as January 1997, which coincided with the holy month of Ramadhan, witnessed a significant increase in the terrorist activities. This in turn resulted in a sharp increase in the numbers of terrorist acts, particularly those involving car bombs, bringing the number of persons killed since the beginning of the violence to some 60,000, as stated in a report about the human rights situation in Algeria published by the US Government on 30 January 1997.

11. The year of 1996 was also marked by serious efforts on the part of the Algerian presidency to activate political dialogue with various parties and movements. These efforts culminated in a national conference held on 14 and 15 of September 1996 and attended by some 1,000 persons who participated in the political dialogue, representing political parties, national organisations and the authorities, together with some historical political figures. The political platform which was signed at the conference contained important provisions, including one concerning a referendum on constitutional change regarding powers of the president and the electoral law, to be organised by the end of 1996; legislative elections to be held during the first six months of 1997; and municipal elections to be held before the end of 1997. It should be noted, however, that four main parties boycotted the conference: Front des Forces Socialistes (FFS), headed by Hussein Ali Ahmed; Mouvement Democratique Algerien, headed by Ahmed Ben Bella; Ittihad (former Communist) Party; and Rassemblement pour la Culture et la Democratie (RCD), headed by Said Saadi, candidate of the presidential elections of 1995.

12. Among important events which took place in late 1996 and the two first months of 1997 were the referendum on constitutional change which was organised on 28 November 1996 and which received the

support of the strong majority of voters, and the adoption by the National Transitional Council of the new electoral procedures for Algeria, which took place in February 1997. The new electoral procedures restricted the criteria for the creation of political parties. Article Three of the legislation stipulates that "in all its activities, a political party is bound to conform to principles and objectives such as the non-use of fundamental components of the national identity in its triple dimensions - Islam, Arab and Amazighit - [...] for political purposes". Furthermore, Article Five of this legislation stipulates that "no party can found its creation and/or action on the basis of objective components, inter alia, sectarian, regionalist, feudal practice" or practice contrary to the values of Islamic moral code, national identity or the Revolution of 1st November and which touches upon the symbols of the Revolution".

13. Given the deterioration of the security situation which continued throughout the first half of 1997 and, consequently, the restricted movements of foreigners in Algeria, the collection of reliable information on the risks being faced by Algerians has become quite difficult.

(1)

- a) As to asylum-seekers of Berber origin and members of "le Front des Forces Socialistes" (FFS), to which many Berbers belong, according to various reports on human rights practices, including some emanating from governments, Algeria's population is ethnically mixed, and ethnic minorities seem to fear no more and no less than other Algerians. Berbers were the original inhabitants of the region, and their ethnic consciousness, fuelled by a desire to preserve their distinctive cultural identity and language in the face of the Government's emphasis on the development of an Arab identity, remains strong.

Many Algerians are of mixed Arab and Berber descent, and many Berbers hold positions of influence within the Algerian society. Nevertheless, some Berber spokesmen assert that the Government implicitly seeks to repress the Berber culture, including the teaching and propagation of Amazight, the language of the Kabylie Berbers. Amazight is not taught in primary and secondary schools but is taught at Tizi Ouzou University.

- b) In addition to persons fleeing the violence in Algeria, the deteriorating economic, social and security situation as well as the long tradition of emigration have created the potential for large numbers of Algerian nationals to attempt to use asylum procedures for immigration purposes. Therefore, if a person is moved exclusively by economic considerations, he/she cannot be considered as a refugee. The distinction between an economic migrant and a refugee is, however, sometimes blurred in the

same way that the distinction between economic and political measures in an applicant's country of origin is not always clear.
