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Algeria

Asylum-seekers fleeing a continuing human rights crisis

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A briefing on the situation of asylum-seekers originating from

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Introduction

The following is a short briefing document which was originally provided by Amnesty International to European decision-makers on asylum claims ahead of an EU meeting on 16-17 December 2002 to discuss the human rights situation in Algeria. Following a recent mission to Algeria, the organization is now making the document public in the hope that it will be of use to all those involved with assessing, supporting or submitting protection claims related to persons originating from Algeria. Apart from changes made to this introduction, the document remains largely intact.

The briefing was written as a response to specific questions raised with Amnesty International by the European Commission and was intended for asylum adjudicators who, given the difficulty of accessing information on the country, may have been unaware of the full extent of human rights abuses which persist in Algeria to this day. The briefing highlights a number of issues, but is by no means a comprehensive survey.

Amnesty International has given a high priority to its research work on Algeria since the current human rights crisis began in 1992, documenting and repeatedly condemning cases and patterns of human rights abuses committed by security forces, armed groups and militias armed by the state. Until mid-1996 Amnesty International regularly conducted visits to Algeria to carry out research work and, whenever possible, talks with government officials. After sending a mission in May 1996 the organization was denied access by the Algerian authorities for four years, despite repeated requests to send delegations. The period between 1996 and 1998, in particular, saw the highest level of human rights abuses that the country has known during the current crisis.

Amnesty International was allowed to return to the country on two occasions in May and November 2000, but was then denied access until early in 2003. The visit which took place in February and March 2003 confirmed the broad conclusions of this briefing and also allowed the organization to update its information on the human rights situation in Algeria. Amnesty International will be issuing a new country report on Algeria in the autumn of 2003, in which it will highlight some of its key concerns, such as the continuing prevalence of torture and secret detention, the lack of progress in addressing impunity because of a general failure to investigate past and current human rights abuses and the need to bring to justice their perpetrators.

Research methodology

In conducting its research, Amnesty International is careful to ensure that it never relies on a single source of information when raising concerns about human rights abuses. The organization is always at pains to verify information from as many sources as possible. In doing so, as well as conducting field missions whenever possible, Amnesty International draws on information from the Algerian authorities, other countries' governments and their representatives, inter-governmental organizations, other NGOs,

local civil society associations and other organizations, human rights lawyers and other activists, national and international media, and other documentary sources, including websites, which the organization considers to be credible, as well as testimonies from victims of human rights abuses and their families.

Given the stringent requirements of Amnesty International's research methodology, the organization wishes to emphasize that the lack of reference to particular incidents or to particular kinds of human rights abuses in its published material should never be considered as providing a basis, in and of itself, for concluding that a certain incident or abuse did not take place, or indeed that certain patterns of abuse do not exist. Keeping in mind that refugee status decision-making requires the decision to accord an applicant whose claims appear credible the benefit of the doubt,⁽¹⁾ Amnesty International recognizes that its reports cannot cite (a) all the information available to the organization, which may be credible but nonetheless unverified; and (b) every incident, or type of incident, which may provide grounds for a credible claim to refugee status.

The human rights situation in Algeria - general observations

In April 2002, Amnesty International published a report entitled *Algeria: When token gestures are not enough: human rights and the Algeria-EU accord* (AI Index: MDE 28/007/2002). This report highlights the fact that the level of violence and number of reports of human rights abuses in Algeria continues to be shockingly high.⁽²⁾ The report observed that "[d]espite government promises in 1999 to tackle the legacy of years of conflict in the country, there has been little, if any, progress to date towards the establishment of truth and justice regarding a decade of massive human rights abuses."⁽³⁾ These observations illustrate the fact that little may be said to have changed in Algeria, notwithstanding the fact that Amnesty International noted, and indeed publicly welcomed, a certain number of positive developments in its November 2000 report, *Algeria: Truth and justice obscured by the shadow of impunity* (AI Index: MDE 28/11/00). In the same November 2000 report, Amnesty International noted that while the level of violence in the country, including killings, had significantly dropped, and reports of arbitrary arrests, prolonged incommunicado detention, torture, "disappearances" and unfair trials had diminished markedly, violence remained at a very high level.

These assessments still remain relevant today, and Amnesty International has not found that the general conditions and situation in Algeria have improved significantly during the period 1999-2002. It is Amnesty International's assessment that the human rights situation in Algeria remains fundamentally unchanged, despite official rhetoric.

In considering the human rights backdrop to asylum claims from Algeria, Amnesty International is not surprised by the continuing levels of asylum claims being made in Europe and elsewhere. Needs for protection continue to be real and compelling, although it is well recognized that each case will need to be determined on a case-by-case basis, and on its merits. Amnesty International recalls that asylum decisions cannot consider each individual claim made by an asylum applicant in isolation. Rather, the cumulative effect of the range of claims an individual makes must be considered.⁽⁴⁾

While it is not possible for Amnesty International to identify an exhaustive list of groups which have a continuing vulnerability in the current political and human rights climate in Algeria, the organization nonetheless has particular concerns about persons with real or perceived links with armed groups, about real or perceived opponents of the political system and about human rights activists. In this regard, Amnesty International notes that family members and friends of these people, regardless of gender or age, are also vulnerable as targets of human rights violations.

A continuing case for protection

Based on its own research, Amnesty International is persuaded that there is a strong and continuing case for protection of many asylum-seekers, keeping in mind of course that a fair and satisfactory procedure requires, *inter alia*, consideration of claims on a case-by-case basis.

Amnesty International is concerned that a number of state entities, including security forces and state-armed militias(5), continue to perpetrate human rights violations against civilians and members of armed groups. Amnesty International also has continuing concerns about human rights abuses committed by non-state entities, such as armed groups.

Amnesty International recognizes that it is often very difficult to identify who is responsible for any given human rights abuse or threat of abuse. This is particularly true in the case of killings, where official restrictions on information about such incidents often make it impossible to obtain precise details about the identity of the victims or the exact circumstances of their deaths. The widespread use by both state and non-state actors of armed personnel in civilian clothes further complicates the task of identifying the perpetrators of any particular killing.

Recent events

In considering applications for protection from Algerian asylum-seekers, there are a number of events which may be relevant to a claim for protection. However, these must not be seen as representing an exhaustive list of events which adjudicators should consider relevant to a claim for protection.

The issues of the Civil Harmony law, the presidential amnesty of 20 January 2000 and military service are discussed at a later stage in the briefing.

Recent regulations concerning freedom of expression impose harsher penalties for defamation of the President and state institutions, including the army. Some human rights activists have paid a heavy price for speaking out on behalf of victims and raising questions related to the state's involvement in serious human rights violations. Recently, Mohamed Smain, President of the Relizane branch of the *Ligue algérienne pour la défense des droits de l'homme* (LADDH), Algerian League for the Defence of Human Rights, was sentenced on 24 February 2002 to one year in prison on charges of defamation against a former mayor and local chief of a state-armed militia, and eight of his militia companions. The militiamen had accused Mohamed Smain of falsely linking them to the abduction, torture, killing and "disappearance" of dozens of citizens in the *wilaya* (province) of Relizane and the disposal of bodies of victims in mass graves in the area. In his defence, Mohamed Smain stated that he was merely reporting the statements of dozens of families of the "disappeared" who say they witnessed the men abduct their relatives in front of their eyes. Mohamed Smain has appealed and, at the time of writing, remains at liberty pending a ruling by the Supreme Court on his case.

Changes to the Penal Code in 2001 further curbed the right to freedom of expression. Amendments to the law increased penalties for individuals found guilty of defaming the President of the Republic or other state institutions such as the army, parliament or the judiciary, using the written or spoken word or an illustration. Defaming the President now carries a prison term of up to one year and a fine of up to 250,000 dinars (approximately US\$3,500). The editor and publisher of an offending article or illustration, as well as the publication itself, are liable to be prosecuted.

The legislative amendments have already been used to intimidate the press. In the first quarter of 2002,

several journalists from private daily newspapers were called in for questioning by the police for allegedly defaming the military through their writing or cartoons, following complaints by the Ministry of Defence under the new articles of the Penal Code.

Punishments, including sentences of up to three years' imprisonment, were also introduced for anyone attempting to preach in places of prayer without authorization.

Human rights organizations, autonomous trade unions and non-governmental organizations which criticize or oppose the policies and actions of the government also continue to face a range of problems and restrictions in their work. Some, such as the Association of Families of the Disappeared of the Province of Constantine, continue to be refused legal registration by the national or local authorities. In November 2001, the UN Committee on Economic, Social and Cultural Rights expressed its concern "that an authorization is required from the Ministry of Labour for the establishment of new independent trade unions outside the recognized *Union Générale des Travailleurs Algériens* (UGTA)".(6)

Changes to the Code of Penal Procedure, promulgated in June 2001, significantly extended the legally permitted period of pre-trial detention. Those accused of "crimes considered to be terrorist or subversive acts" can now be held in pre-trial detention for a maximum of 36 months, more than twice the previous maximum, and those accused of a "transnational crime" for up to 60 months.

Around a hundred unarmed civilians, including children, have been killed by the security forces in 2001 and 2002 in the context of waves of anti-government demonstrations concentrated in the predominantly Amazigh (Berber) region of Kabylia, in north-eastern Algeria. The initial wave followed the death in April 2001 of schoolboy Massinissa Guermah in the custody of the gendarmerie. Gendarmes reportedly fired on unarmed protesters standing more than 100 metres away from them and shot others in the back after dispersing them using tear gas. In several instances, protesters were reportedly pursued to their homes and shot dead inside. In all cases, the security forces appear to have used live ammunition. The demonstrations focused mainly on political repression and deteriorating socio-economic conditions.

Scores of protesters were arrested during or following demonstrations in 2002 and detained for several months. Among them were more than 60 political activists from Kabylia who were held without trial from March on public order charges; they were provisionally released in August. Dozens of other demonstrators were tried and sentenced to between several months and several years' imprisonment. Some were freed after serving their terms. The rest were released as part of a presidential amnesty in August.

Amnesty International has looked into the question of whether there has been an emergence of "new terrorist groups", and finds it difficult to draw any concrete conclusions in this regard. Determining whether a particular group is "new" or may be considered to be "terrorist" is an inherently complex issue, is often based on unclear or incomplete information, and is therefore often speculative.

The leadership, composition and demands of armed groups are largely unknown since they have no spokespeople and issue few public statements. Even when a statement is issued, it has rarely, if ever, been possible to verify its authenticity. Little is known about what communication armed groups have with each other and there are frequent reports of splinter factions, which are often not heard of again.

The Convention grounds

A refugee is a person who has a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group or political opinion.(7) Amnesty International is

aware of human rights abuses which would be sufficient to sustain claims on each of these grounds in relation to Algeria. Of course, each case has to be decided on its own merits, taking into account all the elements of the claims, and there is every likelihood that claims will overlap.(8)

Grounds for persecution may be attributable not only to activities, beliefs or associations in Algeria itself, but may also relate to activities, in particular political and human rights activities, outside Algeria. Indeed, any conduct which is perceived as opposing the social, religious or political status quo is likely to attract the adverse attention of the authorities. This includes, for instance, expressions of homosexuality.

A note on homosexuality(9)

Homosexuality is a taboo subject in Algeria, as it is in various other countries in North Africa and the Middle East. In practice, the shame associated with homosexuality means that few individuals openly reveal their sexual orientation.(10) Homosexuals may suffer harassment from the security forces and society in general.

Sexual relations between persons of the same sex is punishable under Article 338 of the Penal Code. Penalties range from imprisonment of 2 months to 2 years and a fine of 500 to 2,000 Algerian dinars. If one of the individuals is less than 18 years old, punishment for the adult can be raised to up to three years' imprisonment and a fine of 10,000 Algerian dinars. (11)

Are there protection alternatives in Algeria?

Algeria is an enormous country, but much of it is uninhabitable desert or sparsely inhabited. The overwhelming majority of the population resides along the northern coast of the country and its hinterland. The authority of the state carries in all parts of the country. Since legislative changes in 1992, moreover, police officers have been able to operate anywhere in the country without requiring authorization from the police and judiciary with primary jurisdiction over the area. In relation to non-state actors, Amnesty International believes that the lack of information available regarding the reach of their activities in Algeria makes it virtually impossible to conclude that any given group is not active in a particular area. Amnesty International is mindful of the astonishing lack of information about the location or activities of non-state actors and cannot conclude that an individual who faces serious human rights abuses in one part of the country will not face similar problems elsewhere. Amnesty International therefore warns strongly against speculative or wishful thinking that internal protection alternatives may be available.

The non-governmental sector in Algeria

Amnesty International has found that human rights organizations, autonomous trade unions and non-governmental organizations which criticize or oppose the policies and actions of the government continue to face a range of problems and restrictions in their work. Some, such as the Association of Families of the Disappeared of the Province of Constantine, continue to be refused legal registration by the national or local authorities. In November 2001, the UN Committee on Economic, Social and Cultural Rights expressed its concern "that an authorization is required from the Ministry of Labour for the establishment of new independent trade unions outside the recognized *Union Générale des Travailleurs Algériens* (UGTA)".(12)

There are very few humanitarian organizations operational in Algeria. The highest profile example is that of the International Committee of the Red Cross (ICRC) which has been allowed to visit the country since 1999. The ICRC's mandate in Algeria, outside of the Tindouf refugee camps run by the Polisario Front in the southwest of the country, is, however, strictly confined to prison visits in civil prisons.

Monitoring of human rights in Algeria by organizations on the ground is inherently dangerous and problematic, not least because of the widespread nature of abuses and the dangers that those reporting abuses face at the hands of the state, or indeed armed groups. The vulnerability of the limited number of national NGOs, human rights lawyers and activists willing to expose themselves to these risks cannot be underestimated.

Even in the limited number of cases where monitoring may be possible, it is, in any event, no substitute for the responsibility of the state to accord protection to individuals entitled to it, be that national protection or surrogate international protection. Amnesty International considers that it is impossible, therefore, for members of civil society to "offer" protection in Algeria as a substitute for the international protection to which they would otherwise be entitled under either international refugee or human rights law.(13)

In Amnesty International's opinion, the presence or absence of monitoring by NGOs should not inform the decision on whether a person should be returned to a country of origin. The questions which should be addressed are systemic issues about the capacity and willingness of the state to respect, protect and fulfil the human rights of its citizens including those who seek protection in places other than their own places of residence. Amnesty International wishes to highlight, in this regard, that internal displacement is not a substitute for international refugee protection, and that the rights of internally displaced persons to protection must be understood to be without prejudice to the right to seek asylum.(14)

Persons not entitled to international protection

Amnesty International recognizes that there may be individuals from Algeria who would not be entitled to international protection under the Convention relating to the Status of Refugees, on the basis of Article 1F. However, the organization is extremely concerned that weight be given to the more widely applicable principle of *non-refoulement*, as it applies on the basis of customary international law. In a country such as Algeria, this means that provisions such as Article 3 of both the UN Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention on Human Rights, as well as the prohibition on torture under the International Covenant on Civil and Political Rights, should be given extremely careful consideration. Amnesty International also cautions against an approach to exclusion under Article 1F which assumes or attributes "guilt by association."(15)

Because of the inherent dangers to the individuals, Amnesty International is aware of only a limited number of instances where "whistleblowers" amongst members of special branches of the security forces have taken the risk of exposing human rights violations, such as extrajudicial executions and torture, which they have witnessed or about which they have received information. In all cases, these people have only dared to make their accounts public after leaving Algeria. However, even after leaving Algeria, they have generally felt it necessary to keep precise details of their identity or location secret out of fear of possible retaliation from the Algerian authorities. The publication in France in February 2001 of the book *La sale guerre* (The dirty war), by former Algerian army officer Habib Souaïdia, was the first time that a former security forces employee had written a detailed account of their experiences and the human rights abuses they had information about and openly identified themselves as the author. This initiative seems to have at least emboldened several other former members of the security forces

living abroad to give media interviews with similar accounts of grave human rights abuses committed during the current conflict by the security forces, state-armed militias and armed groups.

Rejected asylum seekers / Complementary forms of protection

Amnesty International considers that a rejected asylum-seeker is a person who has been rejected following the proper implementation of a fair and satisfactory asylum procedure, including an independent appeal. Amnesty International considers that the following standards should apply to the return of rejected asylum-seekers to any country, including Algeria:

1. Where there is not a risk that a rejected asylum-seeker would face grave human rights abuses upon return to their country of origin, such persons may normally be returned;
2. Return remains subject to the requirements of return in safety and dignity and with full respect for their human rights;
3. Given the complexities and challenges in ensuring the sustainability of return, the timing of returns should be informed by human rights standards, and guided by the UNHCR.(16)

Importantly, Amnesty International considers that complementary forms of protection should be considered for persons whose claims to protection are rejected.(17) In the case of unaccompanied minors, all steps should be taken to ensure that an individual has access to independent guardianship in the country where refuge is sought, to legal counsel, fair and satisfactory asylum procedures and that all decisions that are taken are made in the best interests of the child.(18)

Amnesty International is not aware of any NGO playing a role in the tracing of parents of relatives, nor, given the difficulties of access to information in Algeria, is it easy to imagine any NGO being able to play such a role. Amnesty International has no information about state or charity care of unaccompanied minors who are returned to Algeria.

Recent developments

The Civil Harmony law and the presidential amnesty of 10 January 2000

The Civil Harmony law (No. 99-08) was passed and entered into force on 13 July 1999. Under this law, members of armed groups who surrendered within six months (from 13 July 1999) and who had not killed, raped, caused permanent disability or placed bombs in public places were exempt from prosecution and those who had committed such crimes would receive reduced sentences, which would be further reduced for those surrendering within three months. The law also ruled out the death penalty or life imprisonment for members of armed groups who surrendered within the six-month time frame, regardless of the crimes committed.(19)

Some government authorities, including President Bouteflika himself, have publicly stated, since 13 January 2000, that the door remains open for those wishing to give up their armed struggle and return to the fold of civil society - thus suggesting that members of armed groups who surrender voluntarily would still benefit from some unspecified measures of clemency. However, to Amnesty International's knowledge, no law has been passed to this effect and any reduced sentences or exemption from prosecution that may have been granted since the deadline have happened on an entirely arbitrary basis.

Presidential Decree No. 2000-03 of 10 January 2000 granted exemption from judicial prosecution - without any exclusion clause - to "the persons who belonged to organizations which decided voluntarily and spontaneously to put an end to acts of violence and which put themselves at the full disposal of the

state and whose names are appended to the original of this decree". However, no appendix containing the names of the beneficiaries of this amnesty was ever published, either in the Official Journal of 12 January 2000, which contained the decree, or anywhere else and the names and precise number of those who benefited from this amnesty has never been made public. It is believed, however, that around a thousand members of the *Armée islamique du salut* (AIS), Islamic Salvation Army, and of the *Ligue islamique pour la da'wa et le djihad* (LIDD), Islamic League for Preaching and Holy War, benefited from the presidential amnesty, following a secret agreement between them and the army.

A range of concerns arise from the provisions of the presidential amnesty as well as from the application of the Civil Harmony law in practice. Amnesty International takes no position on the granting of pardons *after* the truth is known and the judicial process has been completed. However, the organization opposes amnesty laws or other mechanisms which prevent the emergence of the truth and accountability before the law for individuals who may have been responsible for human rights abuses.

Some families of people who were abducted and killed by armed groups have told Amnesty International and the media that those who are responsible for the killing of their relatives have either been amnestied or exempted from prosecution under the Civil Harmony law. Most associations of families of victims of armed groups have expressed the same concerns.

In some cases people who had given themselves up under the Civil Harmony law and obtained certificates of exemption from prosecution were subsequently arrested and charged with offences for which they had just been cleared. Such practices also indicate that the decisions about exemption from prosecution may have been made without the necessary in-depth investigations having been carried out first. It is also possible that persons who benefited from the law may have experienced human rights abuses for other reasons.

Amnesty International has information that dozens of individuals who gave themselves up under the Civil Harmony law have subsequently returned to active service in armed groups. However, it is impossible to know precisely how many have done this.

Military service

At the end of 1999, the Ministry of Defence announced that those over 27 years of age who had not performed military service, including those who had deferred or evaded the draft, would have their situation "regularized". The Ministry has subsequently extended the age range of those affected by this process to include all those born before or during 1980. At the time announced by the authorities for a given age group, those falling within it who have submitted applications reportedly have their cases examined on a case-by-case basis. After this a decision is made on whether they will receive a document declaring that they are exempt from military service. However, the authorities' criteria for deciding who should obtain exemption from military service under this scheme have not been made public and, to Amnesty International's knowledge, the names of those so exempted have not been published. It is therefore not possible to determine precisely who has been or will be exempted.

Meanwhile, military service remains compulsory for all men and currently lasts 18 months. The minimum age for compulsory recruitment is 19. After completing service soldiers must remain available to the Ministry of Defence for five years and may be recalled at any time. Thereafter, they form part of the reserve forces for a further 20 years. Conscripts can normally postpone service until they are 27 years old in order to complete studies. Draft evasion in times of peace is punishable by up to five years' imprisonment according to the *Code de justice militaire* (Military Justice Code), article 254.

Unrest in Kabylia

Around a hundred unarmed civilians, including children, have been killed by the security forces in 2001 and 2002 in the context of waves of anti-government demonstrations concentrated in the predominantly Amazigh (Berber) region of Kabylia, in north-eastern Algeria. The initial wave followed the death in April 2001 of schoolboy Massinissa Guermah in the custody of the gendarmerie. Gendarmes reportedly fired on unarmed protesters standing more than 100 metres away from them and shot others in the back after dispersing them using tear gas. In several instances, protesters were reportedly pursued to their homes and shot dead inside. In all cases, the security forces appear to have used live ammunition when no lives were at risk and failed to take the steps required by international standards before resorting to lethal force.

The security forces' claim that they were acting in self-defence was categorically rejected by an official commission of inquiry which was ordered to look at the events of the first wave of demonstrations in April to May 2001. As a result of the commission of inquiry, the government promised that sanctions would be imposed on members of the Gendarmerie who were implicated and perpetrators would be brought to justice. The gendarme accused of shooting dead schoolboy Massinissa Guermah inside a gendarmerie in Kabylia in April 2001 was sentenced in a military court in October 2002 to two years' imprisonment for "manslaughter". However, at the time of writing, no judicial proceedings were known to have been started against those responsible for the killings of the 100 unarmed civilians in the context of the demonstrations.

Scores of protesters were arrested during or following demonstrations in 2002 and detained for several months. Among them were more than 60 political activists from Kabylia who were held without trial from March on public order charges; they were provisionally released in August. Dozens of other demonstrators were tried and sentenced to between several months and several years' imprisonment. Some were freed after serving their terms. The rest were released as part of a presidential amnesty in August.

Armed groups

There is no question that armed groups are still operating in Algeria. This includes in particular the *Groupe islamique armé* (GIA), Islamic Armed Group, also referred to as GIAs because of the difficulty of establishing the extent to which the armed groups which are said to form its constituent parts act in coordination or in cooperation with each other, and the *Groupe salafiste de predication et de combat* (GSPC), Salafist Group for Preaching and Combat. The GSPC was reportedly formed in 1996 by secessionists from the GIA and is believed to target mainly members of the security forces.

As has been noted above, the leadership, composition and demands of the GIA and the GSPC are largely unknown since they have no spokespeople and issue few public statements.(20)

All available information indicates that what is normally referred to as the GIA is a loose configuration of groups of hardline Islamist activists striving to impose their particular view of what an "Islamic" society should be, of autonomous groups of common-law criminals whose actions are not dictated by any political or religious objectives, and of groups acting in the framework of mafia-type organized criminality.

Identifying the precise areas in which armed groups are active is not possible given the lack of

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independent sources of detailed information to base such judgements on and because of the nature of the groups themselves. Although the GIA and GSPC are often reported as being more concentrated in certain vague geographical areas of the country, there is little credible data to allow one to conclude with any certainty that the groups are unable or unwilling to undertake activities outside of these.

Members or sympathizers of the banned *Front islamique du salut* (FIS), Islamic Salvation Front, as well as members of their families remain vulnerable to human rights abuses. However, it is not always clear whether the abuses are being committed against individuals on account of their association with the FIS or for other reasons.

Amnesty International is aware, for example, of recent cases of FIS members or sympathizers who have been tortured by the security forces. It is believed that they were tortured in order to extract information about a human rights lawyer living abroad who defended FIS members when he worked in Algeria.

Sahrawi refugees in Algeria

Amnesty International has continued to document its concerns about human rights abuses in Morocco / Western Sahara and the Polisario-run camps in Tindouf, southwest Algeria, over the past two decades. (21) The organization has made numerous recommendations to the Moroccan government, on the one hand, and the Polisario authorities, on the other, calling for measures to be taken to address outstanding concerns about past and continuing human rights abuses.

Amnesty International takes no position on the territorial dispute between Morocco, which claims sovereignty in Western Sahara, and the Polisario Front, which calls for an independent state in Western Sahara, or on the issues concerning the referendum on the future of Western Sahara.¹

In the Tindouf camps in south-western Algeria, over 100,000 Sahrawi refugees are reliant on humanitarian assistance for survival. This group of refugees does not enjoy the right to freedom of movement in Algeria and Amnesty International continues to express concerns about human rights abuses in the camps, particularly related to the rights to freedom of expression and freedom of association and to the ongoing impunity enjoyed by those responsible for grave human rights abuses committed in previous years.

Amnesty International is not aware of Sahrawi refugees being allowed by the Algerian authorities to leave the camps without the authorization of the Polisario authorities and to find safe haven in other parts of Algeria. Reports received by Amnesty International indicate that those refugees who manage to leave the refugee camps without being authorized to do so are often arrested by the Algerian military and returned to the Polisario authorities, with whom they cooperate closely on matters of security.

Those Sahrawi refugees who find their way to Morocco normally, it would appear, by travelling southwards through Mauritania rather than through Algeria are only reportedly able to enjoy protection if they are willing to declare their allegiance to Morocco, to renounce any view in favour of the independence of Western Sahara and to denounce publicly to national media the Polisario authorities and the human rights situation in the Tindouf camps.

In Amnesty International's opinion, the asylum claims of Sahrawi refugees should therefore be treated with due consideration for these and other aspects of this complex set of circumstances.

Conclusion

In conclusion, Amnesty International wishes to emphasize that the human rights situation in Algeria still remains extremely volatile. In this regard, although this briefing note covers a range of issues that the organization wishes to highlight, it does not represent a comprehensive or exhaustive identification of all issues relating to the human rights situation in Algeria which may be pertinent to an individual asylum claim. Amnesty International therefore considers that decision-makers should continue to take extremely seriously asylum claims from Algerian nationals or Sahrawi refugees who have been present in Algeria. The level of violence and number of reports of human rights abuses in Algeria continues to be shockingly high, and the ability and willingness of the Algerian authorities to assure protection remain largely elusive.

Selected recent publications by Amnesty International relating to Algeria

AI reports relevant to Algeria

- 14/11/2002 *Algeria: Torture of Brahim Ladada and Abdelkrim Khider: Appeal case.*
- 19/04/2002 *Algeria: When token gestures are not enough: human rights and the Algeria-EU accord*
- 08/11/2000 *Algeria: Truth and justice obscured by the shadow of impunity*
- 01/03/1999 *Algeria: "Disappearances": the wall of silence begins to crumble*
- 01/03/1999 *Algeria: Who are the "disappeared"?: Case studies*
- 04/06/1998 *Algeria: Medical letter writing action: "disappearances" of health professionals*
- 01/03/1998 *Trade Union Action 1998: Algeria appeal leaflet*
- 01/03/1998 *State Injustice: Unfair trials in the Middle East & North Africa: Appeal Cases*
- 26/02/1998 *Algeria: Programme of action to end human rights crisis. Open letter to all governments from the Secretary General of Amnesty International*
- 01/12/1997 *Algeria: A human rights crisis*
- 18/11/1997 *Algeria: Civilian population caught in a spiral of violence*
- 04/03/1997 *Arming the torturers: Electro-shock torture and the spread of stun technology*
- 19/11/1996 *Algeria: Fear and silence: a hidden human rights crisis*

AI news releases relevant to Algeria

- 11/10/2002 *Bosnia-Herzegovina: Human rights chambers decision in the Algerians case must be implemented by Bosnia*
- 03/07/2002 *Algeria: Assaults against families of "disappeared" must stop*
- 28/06/2002 *Algeria: Habib Souaidia's trial highlights concerns over failure to conduct investigations*
- 05/06/2002 *Algeria: EU mission to Algeria: No more 'secret' dialogues. Questions from Amnesty International to Javier Solana, Josep Pique, Per Stig Moller, Chris Patten*
- 24/05/2002 *Algeria: Intimidation of human rights activists must stop*
- 19/04/2002 *Algeria: When token gestures are not enough - human rights and the Algeria-EU accord*
- 17/04/2002 *Algeria: Immediate action needed to prevent further protest killings*
- 26/02/2002 *Algeria: Human rights activist sentenced to a year in prison*
- 08/02/2002 *Algeria: 10 years of state of emergency, 10 years of grave human rights abuses*
- 18/01/2002 *Bosnia-Herzegovina: Letter to the US Ambassador regarding six Algerian men*
- 18/12/2001 *Algeria: EU-Algeria Accord: Human Rights clause effectively dead*
- 09/11/2001 *Algeria: Relatives of the "disappeared" violently dispersed*

- 21/08/2001 *Algeria: Every killing must be urgently investigated*
 - 21/12/2000 *Algeria: Amnesty International condemns massacres of civilians*
 - 21/11/2000 *Algeria: Lack of concrete progress on outstanding concerns is disappointing*
 - 08/11/2000 *Algeria: Truth and justice should not be obscured by impunity*
 - 15/05/2000 *Algeria: Peace must be built on Truth and Justice*
 - 28/10/1999 *Algeria: Correction on the scandalous piece of disinformation about Amnesty International in Liberté newspaper*
 - 06/07/1999 *Algeria: Release of thousands of prisoners -- a positive step*
 - 23/03/1999 *Algeria: Open letter to the presidential candidates in Algeria: Candidates must put human rights at the top of their agenda*
 - 03/03/1999 *Algeria: The wall of silence around thousands of disappearances" begins to crumble*
 - 31/07/1998 *Algeria: UN Human Rights Committee blasts human rights record*
 - 21/07/1998 *Algeria shirks its responsibilities before the Human Rights Committee*
 - 24/04/1998 *UN Commission on human rights: Political horsetrading triumphs over rights protection*
 - 15/04/1998 *Algeria: Four international human rights groups call on the UN Commission to face up to its responsibility on Algeria. Joint press release by Amnesty International, the International Federation of Human Rights, Human Rights Watch and Reporters Sans Frontières*
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(1) See UNHCR Handbook on Procedures and Criteria for Determining Refugee Status ("UNHCR Handbook"), paragraph 196.

(2) See *Algeria: When token gestures are not enough: human rights and the Algeria-EU accord* (AI Index: MDE 28/007/2002), page 2.

(3) *Ibid*, page 2

(4) Reference to UNHCR Handbook, paragraph 53.

(5) The term "security forces", as used by Amnesty International in the Algerian context, includes the entities sometimes referred to as the "Garde Communale", the "Sûreté Nationale" and the "Sûreté Militaire", as well as other bodies, such as the Gendarmerie. The term "state-armed militias", as used by Amnesty International in the Algerian context, includes the entities sometimes referred to as the "GLD" and the "Patriotes".

(6) See *Algeria: When token gestures are not enough: human rights and the Algeria-EU accord* (AI Index: MDE 28/007/2002), page 6.

(7) See Article 1A, 1951 Convention relating to the Status of Refugees.

(8) See UNHCR Handbook, paragraph 67.

(9) "Homosexuals may be eligible for refugee status on the basis of persecution because of their membership of a particular social group. It is the policy of UNHCR that persons facing attack, inhumane treatment, or serious discrimination because of their homosexuality, and whose governments are unable or unwilling to protect them, should be recognized as refugees." UNHCR, *Protecting Refugees: questions and answers*, February 2002. See also, UNHCR *Guidelines on International Protection*:

Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002.

(10) As a general principle, it should also be borne in mind that a person who does not openly reveal their homosexuality may still face human rights abuses as a consequence of sexual orientation. The risk of exposure remains, however discrete an individual may be, or try to be. Furthermore, an individual should not have to assume responsibility for failure to exercise 'discretion' to counter state responsibility to protect him/her from human rights abuses. On the contrary, they have the right to freely express their sexual identity.

(11) "Tout coupable d'un acte de homo-sexualité est puni d'un emprisonnement de deux mois à deux ans et d'une amende de 500 à 2.000 DA. Si l'un des auteurs est mineur de dix-huit ans, la peine à l'égard du majeur peut être élevée jusqu'à trois ans d'emprisonnement et 10.000 DA d'amende."

(12) See Algeria: When token gestures are not enough: human rights and the Algeria-EU accord, (AI Index: MDE 28/007/2002).

(13) Note for example the non-refoulement provisions in the UN Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights.

(14) See Principle 2(2), UN Guiding Principles on Internal Displacement. For further discussion on the concept of the Internal Flight/Protection Alternative, see San Remo Expert Roundtable, UNHCR Global Consultations on International Protection, 6-8 September 2001, including a paper by Prof. James Hathaway and Michelle Foster, "Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination".

(15) See Lisbon Expert Roundtable, UNHCR Global Consultations on International Protection 3-4 May 2001, Summary Conclusions Exclusion from Refugee Status, EC/GC/01/2Track/1, 30 May 2001, paragraph 18: "Association with/membership of a group practising violence or committing serious human rights abuse is, per se, not sufficient to provide the basis for a decision to exclude. However, depending on the nature of the organisation, it is conceivable that membership of a certain organisation might be sufficient to provide a basis for exclusion in some instances."

(16) See Amnesty International's report Afghanistan: Continuing need for Protection and Standards for Return of Afghan refugees (AI Index: ASA 11/014/2002), page 18.

(17) For standards applicable to the grant of complementary forms of protection, see Amnesty International's report Afghanistan: Continuing need for Protection and Standards for Return of Afghan refugees (AI Index: ASA 11/014/2002), page 18.

(18) See Article 3(1), UN Convention on the Rights of the Child.

(19) For more information on the amnesty and Civil Harmony law and associated problems of impunity, see Algeria: Truth and justice obscured by the shadow of impunity of November 2000 (AI Index: 28/011/2000).

(20) See page 9 above where it is observed that even when a statement is issued, it has rarely, if ever, been possible to verify its authenticity. Little is known about what communication armed groups have with each other and there are frequent reports of splinter factions, which are often not heard of again.

(21) Reports include: Morocco/Western Sahara: Freedom of assembly on trial; November 2001 (AI Index: MDE 29/011/2001); Morocco/Western Sahara: "Turning the page": achievements and obstacles; June 1999 (AI Index: MDE 29/01/99); Morocco/Western Sahara: Addendum to "Turning the page": achievements and obstacles; August 1999 (AI Index: MDE 29/05/99); Morocco/Western Sahara: Human rights violations in Western Sahara; April 1996 (AI Index: MDE 29/04/96); Morocco: Breaking the wall of silence: the Disappeared in Morocco; April 1993 (AI Index: MDE 29/01/93); Morocco: Continuing disappearances and restrictions on freedom of expression and movement in Western Sahara; February 1993 (AI Index: MDE 29/03/93); Morocco: Disappearance of people of Western Saharan origin; November 1990 (AI Index: MDE 29/17/90); Report of an Amnesty International Mission to the Kingdom of Morocco; May 1982.