

HUMAN RIGHTS ABUSES IN ALGERIA

No One Is Spared

**Human Rights Watch/Middle East
(formerly Middle East Watch)**

**Human Rights Watch
New York • Washington • Los Angeles • London**

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Printed in the United States of America.**

**LCCCN: 93-81269
ISBN 1-56432-124-X**

Human Rights Watch/Middle East (formerly Middle East Watch)

Human Rights Watch/Middle East was established in 1989 to monitor and promote the observance of internationally recognized human rights in the Middle East and North Africa. Andrew Whitley is the executive director; Eric Goldstein is the research director; Aziz Abu Hamad and Virginia N. Sherry are associate directors; Suzanne Howard is the associate. Gary Sick is the chair of the advisory committee and Lisa Anderson and Bruce Rabb are vice chairs.

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The executive directors of the divisions of Human Rights Watch are Abdullahi An-Na'im, Africa Watch; Juan E. Méndez, Americas Watch; Sidney Jones, Asia Watch; Jeri Laber, Helsinki Watch; and Andrew Whitley, Middle East Watch.

Addresses for Human Rights Watch

**485 Fifth Avenue
New York, NY 10017-6104
Tel: (212) 972-8400
Fax: (212) 972-0905
email: hrwatchnyc@igc.apc.org**

**10951 West Pico Blvd., #203
Los Angeles, CA 90064
Tel: (310) 475-3070
Fax: (310) 475-5613
email: hrwatchla@igc.apc.org**

**1522 K Street, N.W., #910
Washington, DC 20005
Tel: (202) 371-6592
Fax: (202) 371-0124
email: hrwatchdc@igc.apc.org**

**90 Borough High Street
London, UK SE1 1LL
Tel: (071) 378-8008
Fax: (071) 378-8029
email: hrwatchuk@gn.org**

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INTRODUCTION

The Algerian Government and the armed Islamist opposition it is fighting are each responsible for a severe deterioration in human rights conditions. Whereas only three years ago Algeria seemed to be evolving from an authoritarian one-party state toward a more pluralistic and democratic system with a thriving civil society, it is now mired in a virtual civil war in which the rights of no one are inviolate and the democratic process has been all but abandoned.

Suspected Islamists have been subject to torture and mistreatment while in pre-trial detention. Expedited trials in "Special Courts" then violate their rights to due process. As of December 10, twenty-six Algerians had been executed for their alleged participation in Islamist violence, giving Algeria the highest number of judicial executions in 1993 for politically motivated offenses of any country in the Arab world, excepting Iraq.

Meanwhile, political violence intensified dramatically in 1993, accounting for more than one thousand deaths since January. The Islamist resistance, which is at least partly responsible for the violence, has increasingly targeted civilians from all walks of life in its war against the regime. More than 250 civilians died in political violence during 1993, among them prominent intellectuals, public figures, journalists, and foreigners.

January 12 marks the second anniversary of the cancellation of the last elections held in Algeria. Two weeks before their cancellation, the opposition Islamic Salvation Front (*Front Islamique du Salut*, or FIS) had won a surprise victory in the first round of voting for Algeria's unicameral parliament, and seemed assured of obtaining a solid majority in the second round. On January 11, 1992, a military-backed group from within the governing circles ousted President Chadli Benjedid and the following day called off the electoral process. Its intervention was clearly aimed at depriving the FIS of its imminent election triumph.

The new regime justified its actions in part by claiming that it was safeguarding human rights and the country's democratic prospects from Islamist extremists who, they said, would trample rights and abandon democracy once in power. Sadly, the regime has done little in the field of human rights to distinguish itself from the FIS-led human rights disaster it claimed to be preventing.

Nor, after two years, has the regime shown any inclination to restart the democratic process. At the end of December 1993, the five-member "High State Council" (*Haut conseil d'état*, or HCE), created in January 1992 to assume executive powers after the forced resignation of the president, was to be dissolved as the five-year presidential term came to an end. The body that would replace the HCE had yet to be announced as this report went to press, but, like the HCE, its members were almost certainly not going to be chosen by the country's electorate. The HCE had stated earlier that parliamentary and presidential elections would be possible only after a "transitional" period beginning in 1994 and lasting at least two years.¹

This report does not attempt to provide a comprehensive survey of human rights conditions in Algeria. However the topics presented highlight key aspects of the overall picture: grossly unfair trials before Special Courts that since February 1993 have resulted in nearly 400 death sentences for suspected

¹ See the HCE's draft platform on the "transition period," released on June 21, 1993. English text available from the Embassy of Algeria in Washington, D.C. French text published in *El-Watan*, June 22, 1993.

Islamist militants; the curtailment of the rights to free expression for the press as a whole; and the deliberate killing of civilians by the armed resistance.

ABOUT THIS REPORT

This report is based on interviews with lawyers, human rights activists, diplomats and journalists; press reports; and a four-week mission to Algeria in June 1992. Since that trip, Middle East Watch has been prevented by the government from conducting further visits: several letters and démarches during 1993 to the authorities requesting permission to conduct a return visit all went unanswered.

The 1992 mission was conducted at the invitation of Algerian authorities. The participants were Lisa Anderson, a professor of political science at Columbia University and vice chair of Middle East Watch, and Eric Goldstein, research director of Middle East Watch. In Algeria, they met with a wide spectrum of Algerians, including government officials.

The mission was impeded, however, by the refusal of authorities to permit the delegation to visit any place of detention. Middle East Watch filed numerous requests for access to detention facilities prior to its arrival, as well as in person to then-Interior Minister Larbi Belkheir.

Middle East Watch's fact-finding was hampered also by the detention on two occasions of one of its researchers, in both instances as the researcher was traveling to meet with alleged victims of torture. After each incident, the researcher abandoned the planned meetings, judging them too risky for his intended contacts.

In one instance, the researcher was detained at a roadblock in the Algiers suburb of al-Baraqui and taken to a local police station before being released. The researcher was also held for eight hours in Constantine, including four hours in an interrogation center operated by Military Security. Plainclothes interrogators refused to identify themselves or the agency for which they worked, temporarily confiscated the researcher's notebooks, refused to permit him to contact the U.S. Embassy, and threatened to prolong his incommunicado detention until he revealed the names of his local contacts. The pretext for the detention was that the researcher lacked proper authorization to work in Constantine. He was released after being forced to sign a written version of his oral statement. The Minister of Interior later apologized in person for the detention.

This report was edited by Andrew Whitley, executive director of Middle East Watch.

SUMMARY AND RECOMMENDATIONS

The Algerian Government and the armed Islamist opposition it is fighting are each responsible for a severe deterioration in human rights conditions. This report highlights three areas of abuse: the grossly unfair trials before Special Courts that over the past ten months have resulted in nearly 400 death sentences for suspected Islamist militants; the deliberate killing of civilians by the armed resistance; and an assault on press freedom from two directions: heavy-handed government restrictions and violence by the armed opposition.

UNFAIR TRIALS IN SPECIAL COURTS

During 1993, one of the government's main instruments of repression has been a system of Special Courts, created by decree in September 1992, to try cases involving "terrorism" and "subversion". These courts have tried hundreds of suspected Islamist militants, many in mass trials, and sentenced at least 368 to death (the majority *in absentia*) and over one hundred to life in prison. Twenty of those sentenced to death have already been executed, in addition to six others who received the death penalty before military tribunals. As of December 10, no other country in the Arab world except Iraq had executed in 1993 as many persons convicted for politically motivated offenses.

Middle East Watch opposes the death penalty as a matter of principle. It finds the punishment particularly abhorrent when it is imposed after unfair trials, as is the case in Algeria's Special Courts. Executions after unfair trials constitute arbitrary executions, a gross human rights abuse.

According to numerous defense lawyers interviewed by Middle East Watch, Special Courts routinely convict suspects on the basis of confessions that have been extracted under torture. Many suspects are held beyond the legal twelve-day limit before they are brought before an investigating judge. When they are questioned by the investigating judge, defendants are often denied their right to legal counsel. Even when a lawyer is present, defense efforts to discredit confessions extracted under these conditions are routinely ignored or rejected by investigating judges and trial judges, and those confessions then become the main, if not sole, basis for convictions. Middle East Watch is aware of no Special Court case in which a judge accepted a defense motion to conduct a medical examination of a defendant who claimed that his confession had been coerced under torture.

In addition, the rules governing the procedures of the Special Courts violate defendants' due-process rights by:

-- extending to twelve days the legal limit of *garde à vue* (incommunicado) detention for suspects in "terrorism" and "subversion" cases, in violation of the principle that suspects should have prompt access to a lawyer and a hearing before a judge;

-- limiting defendants' opportunities for appealing verdicts;

-- imposing time limits on the duration of stages of the trial, without regard to the complexity of the case and the number of defendants;

-- maintaining strict anonymity for the judges presiding over cases, thereby undermining their accountability and increasing the risk that conflicts of interest will not be exposed; and

-- interfering with the right of defense by giving Special Courts broad discretion to discipline or suspend lawyers from practice for causing "disturbances".

Special Courts provide defendants with weaker procedural safeguards than they would enjoy before an ordinary court in Algeria. It is disturbing that Special Courts have retroactive jurisdiction over offenses committed before the courts' creation, subjecting defendants to trial procedures that are less protective of their due-process rights than the procedures of the courts functioning at the time that their offenses were allegedly committed.

Finally, the decree establishing the Special Courts endangers the rights of Algerians by defining "a subversive or terrorist act" in a broad and vague manner that could include a variety of nonviolent actions, including speech and association. Under the decree, persons who praise or encourage "subversive" or "terrorist" acts, or who knowingly reproduce or distribute documents praising such acts, are subject to prison terms of up to ten years.

PRESS FREEDOM CURBED

Algeria's press, heralded only three years ago as one of the liveliest in the Arab world, has been under siege since the 1992 coup. During the last several months, the pressure has come not only from the regime but also from those seeking to overthrow it.

Although it continues to debate other subjects in a critical fashion, the Algerian media provides little sense of the brutality of the state's campaign against Islamists and their suspected sympathizers. This is especially true of television and radio, which, since 1992, have largely reverted to serving as government mouthpieces.

The government has largely prevented both local and foreign media from providing independent coverage of the political violence wracking the country. It has achieved this by suspending newspapers (daily newspapers have been suspended at least eight times since July 1992), intimidating and filing charges against journalists, threatening to withdraw public-sector advertising, and refusing visas and work permits for many foreign correspondents who request them. Most reporting on the security situation relies on the terse dispatches of the official Algérie Presse Service.

But the imbalanced press coverage of the conflict cannot be blamed entirely on the government. Most journalists in Algeria harbor little sympathy for the Islamist cause. Many of the publications that covered the Islamists more sympathetically in the past, such as the FIS organs and the satirical Essah Afa, have been banned.

Seven journalists have been assassinated since May 1993 in attacks blamed by the authorities on Islamist groups. A few others have escaped attempts on their lives. Journalists continue to receive anonymous threats by mail and phone. Although no group has claimed responsibility for the killings, a FIS leader abroad implicitly justified in October 1993 the targeting of journalists for what they wrote.

The violence has driven some journalists to flee abroad and others to change their daily routines. Many leave their articles unsigned as a form of protection.

THE KILLING OF CIVILIANS BY OPPOSITION GROUPS

Casualties resulting from the political violence more than doubled in 1993 compared to 1992. Many of the casualties occurred in gun battles between the security forces and well-armed Islamist groups. But, increasingly, the violence involved abduction-killings and ambushes of civilians. The victims came from all walks of life, and included prominent writers, professors, public figures and foreigners working or living in Algeria. Both civilians and security force members have been found dead after having been abducted and murdered in custody.

There is no accurate independent source of casualty figures in Algeria. Tallies of official reports indicate that since elections were cancelled in January 1992, nearly 400 civilians have been killed in the political violence.²

Middle East Watch believes that standards of international law prohibit the mistreatment or killing of all persons in custody, as well as the targeted assassination of civilians, whether by government forces or by armed opposition groups. We believe that human rights abuses by one party, no matter how egregious, never justify violations committed by another party.

There is little doubt that Islamist groups were responsible for some of the killings, despite the absence of claims of responsibility for virtually all acts of violence not committed by uniformed or identifiable security forces. Middle East Watch deplores the fact that, to our knowledge, FIS leaders speaking on behalf of the party have made no statements condemning in clear terms the killing of civilians or of persons in custody, and in some instances have sought to justify the killing of civilians.

THE U.S., FRANCE AND THE EUROPEAN UNION

Algeria's creditors and allies have largely failed to press publicly for improvements in Algeria's human rights record and a resumption of the democratic process. The position of the Government of France, Algeria's largest creditor, has been particularly one-sided, denouncing extremist violence while remaining silent in the face of the brutal repression carried out by the government.

At a time when the Government of Algeria is eagerly seeking to restructure its foreign debt in order to lighten the burden of its debt service, the U.S., France and the European Union have continued to give Algeria credits, loans and loan guarantees without explicitly linking the size, continuation or terms of these programs to the government's respect for human rights or resumption of a democratic process.

RECOMMENDATIONS

² **The official reports on casualties do not make clear the criteria for classifying a victim as a civilian. The designation presumably excludes suspected members of armed opposition groups. Many observers believe that tallies based on official reports significantly undercount the number of persons killed in Algeria.**

To the Government of Algeria

Middle East Watch urges the Government of Algeria to allow ready access to all international human rights organizations wishing to conduct fact-finding missions to Algeria.

With regard to the Special Courts, Middle East Watch urges the Government of Algeria to:

Halt all executions;

Void all convictions before the Special Courts, and release or grant new and fair trials to defendants who have been convicted by Special Courts;

Implement effective measures to halt mistreatment and torture during interrogation; these include requiring courts to insure that allegations of abuse during detention are seriously and impartially investigated, and that all confessions obtained under abusive conditions are discarded by the court;

Eliminate provisions, such as those found in Legislative Decree 92-03, that have the potential to penalize nonviolent acts of speech and association;

Ensure the defendants' right to counsel, both at the pre-trial and trial stages; and

Ensure that defendants have access to a meaningful appeal of the sentence and conviction.

With regard to the press, Middle East Watch urges the Government of Algeria to:

End the arrest and prosecution of journalists for what they write or publish, except in those cases where there is a strong prima facie case that the reporting or commentary poses an *imminent* threat of violence or danger to the public order;

End the practice of suspending or banning publications, and lift suspension orders currently in effect; and

Grant ready access to foreign journalists wishing to report from Algeria.

To the Islamic Salvation Front (FIS) and other Islamist opposition groups

While recognizing that the political violence in Algeria is not the sole responsibility of the Islamist opposition, Middle East Watch urges the FIS and other opposition groups in Algeria to:

Use all means at their disposal to end violent attacks on civilians and on all persons who have been taken into custody by opposition groups; these means include publicly denouncing all such attacks, and urging their unconditional halt; and repudiating statements made in the past by leaders of the Islamist opposition that seek to justify the targeting of some civilians.

To the U.S., France and the European Union

Middle East Watch urges the U.S., France and the European Union publicly to press the Government of Algeria to end human rights abuses and resume the democratic process. They should, as a matter of priority, call for a halt to executions and the cancellation of death sentences imposed after unfair trials before Special Courts.

The European Union should demonstrate its concern by sending a high-level delegation to Algeria in order to conduct an impartial investigation of governmental and non-governmental abuses of human rights. The findings of the investigation should be publicly disseminated and play a role in the formulation of EU policy toward Algeria;

Algeria's major public creditors should put the government on notice that future loans, credits, and loan guarantees shall be linked to tangible progress by the government in ending human rights abuses and resuming the democratic process;

At the same time, governments should condemn, both publicly, and through whatever channels they maintain with FIS representatives, the violent campaign against civilians that is being carried out by Algerian opposition groups. They should urge these representatives to use all means at their disposal to halt these killings.

The Clinton administration should put the Government of Algeria on notice that it intends to link the Algerian programs of the Commodity Credit Corporation and the Export-Import Bank to the achievement of tangible progress toward resuming the democratic process and curbing human rights abuses. With regard to the CCC, legislation incorporated into the Foreign Assistance Act forbids the provision of assistance to any government that engages in a "consistent pattern of gross violations of internationally recognized human rights."

The U.S. should also raise Algeria's human rights record at the World Bank. Under the International Financial Institutions Act of 1977, the U.S. is obligated to use "its voice and vote" at the World Bank to channel assistance to governments other than those engaging in a patterns of "gross violations of internationally recognized human rights." The U.S. should comply with this provision in its actions on pending non-basic human needs loans by the World Bank to Algeria.

HISTORICAL BACKGROUND

Only three years ago, Algeria's twenty-six million people seemed to be on the way to achieving the freest political life in the Arab world. Political liberalization followed massive riots in October 1988 that erupted from popular frustration with failed economic policies, corruption and three decades of repressive rule under National Liberation Front (*Front de Libération Nationale*, or FLN) governments. The riots were the first explosion of mass discontent since the country had gained its independence from France in 1962, after 132 years of colonial rule.

President Chadli Benjedid put down the unrest by declaring a state of siege and bringing in the army. Security forces shot dead several hundred civilians and arrested thousands. News reports at the time estimated the toll in the crackdown at anywhere from 500 to 2,000, well above the official toll of 176.

The government nonetheless acknowledged the depth of public discontent. In a nationwide broadcast on October 10, 1988, President Chadli called for an end to the rioting and promised economic and political reforms, including a referendum on revising the constitution. He met the same day with a delegation of Islamist leaders, including Abbasi Madani and Ali Belhadj, the future leaders of the FIS.

The Chadli government tolerated most of the grassroots activism and public protest that mushroomed after the riots, much of which focused on the issue of human rights. The news that hundreds of persons detained during the recent disturbances had been beaten and tortured caused Algerians to rise up in revulsion. Raised to believe that torture was what the French colonial authorities had inflicted on Algerian fighters for independence (*mujahidin*) three decades earlier, many Algerians were outraged to encounter torture as something that Algerians inflicted on other Algerians.³ That agony of self-discovery was captured in the *Black Book of October*, published one year after the riots by the newly formed National Committee against Torture. The introduction to that book intones:

Hundreds and maybe even a thousand, were arrested beaten, put on the rack, tortured, and for the most part scarred in their bodies and memories ... This happened here, in Algeria. Yes, in our country wounded by the exactions of colonialism and of the war, in this land that is symbolized eternally by the word "martyr". And the horror of this turning of history inside-out becomes almost unbearable when a torture victim relates that one of his torturers told him that he himself had been subjected to the *gégène* [the application of electrodes to various parts of the body, notably the penis] at the hands of the colonial army.⁴

Like the popular uprisings that shook Communist Eastern Europe the following year, the 1988 riots launched a volatile period in which uneven reforms from above and the angry politics of the disenfranchised inspired both hope for democracy and dread of political turmoil.⁵

In February 1989, voters approved a new constitution that had been drafted by the one-party

³ For an account of the practice of torture by the French during the Algerian war of independence, see Alistair Horne, *A Savage War of Peace: Algeria 1954-1962* (Harmondsworth: Penguin Books, 1977), 195-207.

⁴ Comité national contre la torture, *Cahier noir d'Octobre* (Algiers: 1989), 7.

⁵ See Africa Watch and Middle East Watch, "Human Rights in Algeria One Year After the Riots," October 4, 1989.

government. The new constitution provided the legal basis for a freer political life. It affirmed freedom of conscience and opinion (Article 35), privacy and confidentiality of correspondence and communication (Article 37), and the rights of expression, association, and organization (Article 39). And, for the first time, it specified the rights to establish "associations of a political nature" (Article 40) and unions (Article 53).

Many of the civil rights provided in the constitution required enabling legislation. Over the next eighteen months, the National Assembly passed the Law on Political Associations (July 1989), the Information Code (April 1990) and a June 1990 law permitting free trade unions, ending FLN monopolies over political life, media and organized labor.

In the realm of civil and human rights, the government took a number of positive steps following the adoption of the new constitution. It released most political prisoners and ratified the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 1989 the government abolished the State Security Courts, special tribunals that heard the majority of so-called security cases since their creation in 1975. In September 1990, President Benjedid announced the abolition of the *Direction générale pour la documentation et la sécurité* (DGDS), a feared internal intelligence agency.

Within a year of the passage of the Law on Political Associations, nearly thirty political parties sought and received official recognition, including the *FIS*, the first legally recognized and formally constituted Islamist political party in the modern Arab world. Two other significant Islamist parties, Hamas and an-Nahdha, were formed in late 1990. (These two parties, which fared poorly in the December 1991 National Assembly elections won by the FIS, continue to function legally.)

The Law on Political Associations opened up the political system, but imposed constraints on the parties that could be formed. Recognition was refused to at least one party, the Algerian Popular Party, which was the successor to the FLN's main rival during the independence struggle, the *Mouvement National Algérien*. An Algiers court rejected the application from the party, citing provisions of the Law on Political Associations that prohibited parties from being based on "conduct contrary to Islamic morality and the values of the revolution of November 1, 1954." The law also banned parties based on religion. (The order dissolving the FIS in February 1992 referred to Articles 33 and 34 of the Law on Political Associations, which gives the Interior Minister the authority to close an organization in case of an impending emergency or danger to the public order, or a flagrant violation of the laws. See below.)

THE 1990 MUNICIPAL ELECTIONS

In June 1990, municipal elections took place that were widely viewed as the freest in recent memory in the Arab world. The winner by a landslide was the FIS, which had pledged to eliminate corruption and introduce Islamic values into governance and local institutions. Some fifty parties took part in the elections, although only a few fielded candidates nationwide.

The election outcome shocked the political establishment in Algeria by confirming the standing of the FIS as the country's dominant opposition force, and by discrediting the FLN and, by extension, the government. The FIS captured fifty-four percent of the popular vote (the voter participation rate was estimated at between sixty-five and seventy-five percent of eligible voters) and took control of 854 out of 1,541 municipal councils, despite not having fielded candidates in 276 communes. The FIS won thirty-two of the forty-eight *wilaya* (provincial) assemblies, and swept all of the major cities.

The FIS victory accelerated its struggle for power. The party demanded new elections to replace the one-party National Assembly that had been serving since 1987. In early 1991, the government announced two-round legislative elections for June 27 and July 18, 1991. But five weeks before the first polling date, the FIS declared an indefinite national strike to protest what it considered to be unfair voting laws. FIS supporters staged mass demonstrations and occupied the four major squares of the capital. In early June, serious violence erupted after riot police were ordered to clear the streets. President Chadli postponed the elections and declared a state of siege.

The state of siege decree of June 4 (No. 91-196) gave the military the power to perform police functions, to place suspects in administrative detention, ban publications, meetings and gatherings, and to suspend associations. The decree also provided that civilian suspects in offenses against the security of the state could be tried by military courts. Many provisions of the decree were revived in the February 1992 state of emergency decree, which remains in effect today.

Throughout the month of June 1991, security forces battled supporters of the FIS. On June 30, Madani and Belhadj were arrested and accused of an "armed conspiracy against the state." They were jailed and, one year later, sentenced by a military court to twelve years in prison on charges of conspiring against state authority, causing harm to the economy and distributing seditious tracts. The court acquitted them of all charges that linked them directly to acts of violence. Both men continue to serve their sentences.

The official tally of casualties during the events of June 1991 was fifty-five deaths and 326 injured; independent estimates were higher. Authorities arrested at least 5,000 suspected Islamists for questioning,⁶ and placed over 300 of them in administrative detention in detention camps around the country.

In September, the government lifted the state of siege and the following month announced that two-round National Assembly elections would be held in December 1991 and January 1992. Some fifty parties began preparing for the elections. But the FIS, its leaders still in prison, did not announce until early December that it would compete in the voting.

The first round of what was the first multiparty election ever for Algeria's National Assembly took place in an atmosphere of relative calm, on December 26. That evening, then-Prime Minister Sid Ahmed Ghozali pronounced himself "very satisfied with the conduct, the climate, and the rate of participation."⁷ Then-Minister of Interior Larbi Belkheir said that he too was "very satisfied," remarking that the election conditions were generally "perfect," except for some "inconsequential" incidents.⁸ Although some opposition parties and government officials later claimed incidents of ballot-tampering and voter intimidation by FIS supporters near polling stations, no evidence was produced to indicate that such acts had taken place on a large scale.

⁶ The officially acknowledged figure of 5,000 was contested by the Algerian League for Human Rights, which referred to 8,000 arrests.

⁷ Agence France-Presse, December 26, 1991.

⁸ *Ibid.*

The December 26 vote proved another landslide for the FIS. (The party's detractors, however, pointed to the lower rate of participation — fifty-nine percent of Algeria's 13.2 million registered male and female voters had cast ballots — and the lower absolute number of votes cast for the FIS, compared to the June 1990 elections.) According to the official tally, the FIS won 47.54 percent of the votes cast and captured 189 of the 231 seats that were decided in the first round. The FLN won 23.52 percent of the vote and only fifteen seats, and the secularist, Berber-based Front des Forces Socialistes won 7.45 percent of the vote and twenty-five seats. None of the other forty-six parties that had participated captured a single seat or survived into the second round.

The margin of victory for the FIS virtually assured the party of capturing a commanding majority in the 430-member assembly in the second round of elections. This prospect created panic among government officials, supporters of some of the secular opposition parties, and others who claimed that the FIS, once in the government, would prove unstoppable and would destroy democracy, violate human rights, and/or bring financial disaster on the country. Supporters of this view took to the streets to demand a halt to the electoral process.

President Chadli reiterated his commitment to the democratic process and his readiness to work alongside a FIS-controlled assembly. But the pressure continued to grow, and with it rumors of an impending intervention by the army. Government officials retreated from their initial endorsement of the conduct of the elections, and stressed reports of voting fraud. Claims of irregularities in 145 districts, most of them won by the FIS, were submitted to the Constitutional Council, the government-appointed body charged with investigating complaints of electoral fraud.

On January 11, before the Constitutional Council could rule on the fraud charges, a military-backed group within the government forced President Chadli to resign. The army immediately took up positions in the capital. On January 12, the High Security Council (*Haut Conseil de Sécurité*, or HCS), a presidential advisory body, announced it was "taking charge temporarily of all matters that could affect public order and state security." The seven-member Council's deliberations were reportedly dominated by the military officers among its members, notably Minister of Defense Gen. Khaled Nezzar.

Among the Council's first acts was to cancel the second round of legislative elections, citing "the impossibility of continuing the electoral process." The pretext of fraud during the first round was largely abandoned, and the Constitutional Council apparently never issued the findings of its inquiry into the allegations.

President Chadli's resignation created an anomalous situation, especially when he revealed the same day that he had dissolved the National Assembly by a secret decree one week earlier.⁹ The 1989 Constitution provides in Article 85 that, in these circumstances, the president of the Constitutional Council assumes the role of head of state for up to forty-five days, during which time presidential elections are to be organized. But that process was derailed by the HCS, which announced it was going into permanent session and taking charge provisionally of "all matters that might endanger public order and state security."

⁹ Gilles Millet, "Algérie: un putsch à froid contre le FIS," *Libération*, January 13, 1992.

On January 14, the HCS announced it was creating a new body called the High Council of State (the *Haut Conseil d'Etat*, or HCE), "because the continuity of the state warrants filling the void in presidential duties with the formation of a provisional apparatus which will enjoy all powers and prerogatives granted by the Constitution to the president of the Republic."¹⁰ The HCS announced no plan for presidential elections; it said only that the HCE would assume presidential powers until no later than the end of December 1993, when Chadli's term was to have expired.

The HCS ended its permanent session with the swearing in of the members it had chosen for the five-member HCE. In a quest for legitimacy, the HCS recruited as HCE president Mohamed Boudiaf, a hero of the Algerian war of independence who had been living in exile since the 1960s. The other members were Khaled Nezzar, the Minister of Defense; Ali Kafi, head of an organization of veterans of the independence struggle; Tejini Khaddam, rector of the Paris mosque; and Human Rights Minister Ali Haroun.¹¹ Ali Kafi became HCE president after the assassination of Boudiaf in June 1992. At that time, veteran diplomat Redha Malek joined the HCE; in August 1993 Malek became prime minister. Khaled Nezzar, reported to be the strongman of the HCE, remains a member after being succeeded as defense minister by Lamine Zeroual in July 1993.

The newly installed HCE made few attempts to disguise the fact that the purpose of the coup had been to prevent the FIS from attaining a powerful position in the government. HCE member Ali Haroun minced no words in portraying the coup as an anti-FIS move. On January 15, he told France's Antenne-2 Television network:

As human rights minister, I believe that when an exceptional situation in a nation's life occurs, at that point it is a question of defending the whole of this nation, because what threatened us after 15 January was an Islamic state, as is seen in certain countries that I do not want to name here. I say that I defend human rights by doing what is necessary so that my country will not undergo the situation that is being experienced in certain countries in the Middle East and East Africa.¹²

Further comments by Haroun in this vein were broadcast the following day:

The FIS, which has at least shown some honesty and frankness in this area, said that it is not democratic, that it is against democracy, that it does not want democracy. It has said that when it takes power there will be no more elections; there will be the *Shura*, the religious men who meet together and decide on your behalf. The FIS says there will be no democracy. It says there will be no elections. It says it would use the elections to gain power. Afterwards there would be no more elections.

¹⁰ Algiers ENTV Television Network, January 14, 1993, as reported in Foreign Broadcast Information Service, hereinafter FBIS, January 15, 1992.

¹¹ Haroun was named to the post of deputy minister of human rights in June 1991. Four months later the post was raised to full ministerial level. The post was abolished early in the 1992 state of emergency.

¹² As reported in FBIS, January 17, 1992.

As a minister of human rights, my question is: Who is there to defend the notion of human rights? Am I going to allow a situation where, in a month or two, people will no longer have any rights? I cannot do that. There are currently men in Algeria who are assuming their responsibilities. There is a great part of the population that feels reassured. We are going to take the time to set up real institutions to lead this country toward real democracy -- not some pretext of using a democratic process that ends up killing democracy.¹³

Tension mounted in the streets among FIS supporters who felt robbed of their election victory. The party's interim leadership maintained a strident tone toward the regime, denouncing it as unconstitutional and appealing to civilians and soldiers not to recognize its authority. At the same time, these leaders urged their followers to avoid violence.

But both the regime and elements within the FIS apparently opted for a more confrontational posture. Scattered confrontations with security forces began two days after the cancellation of the elections, as did the mass arrests of FIS supporters. Serious clashes erupted later in the week and continued into early February. Some Islamists opted for the armed struggle: assaults with knives or guns took the lives of nine members of the security forces by February 8. Meanwhile, some forty demonstrators had been killed by the police.¹⁴

On February 9, the HCE declared a twelve-month-long state of emergency. (It was renewed indefinitely in February 1993 and remains in effect.) The authorities also seized the FIS headquarters and outlawed the party, citing provisions of the Law on Political Association that empowered the Interior Minister to close an organization in case of an impending emergency or danger to the public order, or a flagrant violation of the laws. In defending the dissolution before the courts, the government accused the FIS of organizing a rebellious movement with the aim of destabilizing the country; issuing a call for rebellion within the army, a call for holy war (jihad), a call to disrespect state institutions; and a call on foreign countries to take stands against the Algerian state. Algeria's Supreme Court upheld the dissolution of the FIS on April 29, 1992.

The February 1992 state of emergency was the third such state of exception to be decreed since 1988, following the six-day state of siege in October 1988 and a four-month-long state of siege that began in June 1991. The current state of exception is by far the longest-running and the toughest, in terms of the powers given to the executive authorities to suppress dissent.

In accordance with Article 4(3) of the International Covenant on Civil and Political Rights, the government notified the United Nations Secretary-General that it was imposing a State of Emergency and derogating from articles of the covenant. The notification, dated February 13, 1992, said the measure,

which is aimed essentially at restoring public order, protecting the safety of individuals and property and ensuring the normal operation of institutions and public services, does not interfere with the democratic process inasmuch as the exercise of fundamental rights

¹³ *Ibid.*

¹⁴ On human rights following the interruption of elections, see Middle East Watch, "Human Rights in Algeria since the Halt of the Electoral Process," February 1992, vol. 2, issue 2.

and freedoms continues to be guaranteed.

The government specified that the sections of the covenant from which it was derogating were articles 9(3), 12, 17 and 21.¹⁵

The emergency decree of February 1992 contained many of the provisions of the State of Siege decree of June 1991, although it vested the emergency powers in the minister of interior rather than in the minister of defense. The decree empowered the minister to:

order the detention of any adult whose "activity is shown to be dangerous to the public order, public security, or the proper functioning of public services" (Article 5);

restrict or prohibit the movement of persons and vehicles (Article 6.1);

prohibit the presence or order the house arrest of any adult whose activity is shown to be harmful to public order or to the functioning of public services (Article 6.4);

order, in exceptional circumstances, searches day or night (Article 6.6);

order the temporary closure of performance and meeting halls, and forbid any demonstration likely to disturb order and the peace (Article 7); and

suspend or dissolve local assemblies or governments if those bodies, by conduct or statements, block or impede the legal actions of the public authorities; and to appoint officials to assume their functions until new elections can be held (Article 8).

The decree also empowered military courts to try civilians charged with offenses against state security (Article 10).

In March 1992, the government began using its emergency powers to dissolve many FIS-controlled municipal councils and provincial assemblies, on the grounds that their functioning had been impaired by "the calculated behavior of their members who seek to thwart the policies of the government." By the end of 1992, the government had ousted the vast majority of FIS members who had been elected to local offices in the 1990 elections. The persons appointed by the government to replace them were among the chief civilian targets of armed Islamist groups (see below, section below on the killing of civilians).

Throughout 1992, the most widely used state of emergency power was the broad authority to detain. By its own count, the government rounded up and dispatched some 9,000 suspected FIS supporters to detention camps, mostly in the remote southern desert. Most were detained in February and March of

¹⁵ Article 9(3) provides that anyone detained shall be brought promptly before a judge and be tried or released within a reasonable time. Article 9(3) also provides that it shall not be the general rule that persons awaiting trial shall be detained in custody. Article 12 provides that persons shall have the right to liberty of movement and of choice of residence. Article 17 provides the right to the protection of law against arbitrary interference with privacy, family, home or correspondence, and against unlawful attacks on one's honor and reputation. Article 21 provides the right of peaceful assembly.

1992. The detention process afforded almost no due-process rights. Detainees were not informed of the reasons for their detention, the length of the detention order, or the criteria for determining when they would be released.

Those detained ranged from prominent activists who had been elected to public office to suspected sympathizers who were rounded up in the streets apparently on the basis of their appearance (many Islamists wear beards and loose-fitting white tunics). The vast majority had no prior police record and, following their detention, were never charged or brought to trial.

While not exhaustive in scope -- some known FIS activists remained free -- the round-ups were clearly arbitrary and indiscriminate actions, calculated to incapacitate the FIS around the country, without regard to an individual's complicity in illegal acts. Many of those detained for several months contended that their only offense was to have supported a political party that had been legal until February 1992.

The authorities continued to administratively detain suspected Islamists in desert camps during 1993, although use of this measure apparently declined. Information about the camps remains hard to obtain: the government stopped releasing figures at frequent intervals about the population of the detention camps; nor did it allow independent organizations or journalists to visit them. The independent Algerian League for the Defense of Human Rights reported on October 28, 1993 that it had received information indicating that a total of one thousand detainees were being held in two detention camps, Qued Namous and Ain M'guel.¹⁶

¹⁶ Agence France-Presse, October 28, 1993.

UNFAIR TRIALS IN SPECIAL COURTS

Since February 1993, specially constituted courts in Algeria have handed down at least 368 death penalties, over one hundred life sentences, and several hundred sentences of up to twenty years to suspected Islamist militants charged with participating in the wide-scale political violence wracking the country. Twenty-six suspected militants were put to death in 1993, twenty of them convicted in the so-called "Special Courts" and six convicted in military courts. These were the first executions carried out in Algeria since 1989.

Human Rights Watch/Middle East Watch condemns both the executions as well as the violation of defendants' rights that has occurred systematically in the Special Courts. These tribunals, both in their stipulated procedures and their actual practice, fall far short of internationally recognized standards for a fair trial. Hundreds of defendants have been sentenced to death or long prison terms in group trials that are sometimes completed in a matter of two or three sessions lasting no more than a few hours each.

Middle East Watch opposes the death penalty as a matter of principle. Executions are especially abhorrent when carried out after trials that do not adhere to international standards for a fair trial. The Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, approved in May 1984 by the United Nations Economic and Social Council (ECOSOC Resolution 1984/50), states, in Article 4, "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts." The Safeguards also require a legal process giving "all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights, including the right ... to adequate legal assistance at all stages of the proceedings" (Article 5). These Guidelines have been endorsed by other UN resolutions, including the UN Congress on the Prevention of Crime (September 1985), ECOSOC 1986/10 (May 1986) and ECOSOC 1989/64 (May 1989).

Legislative Decree 92-03, which established the Special Courts, doubled the punishments that Algeria's penal code provided for comparable offenses, provided life sentences for what were previously ten-to-twenty year sentences, and the death penalty for what were life sentences. Special Court verdicts cannot be appealed except on procedural grounds. To date, the Algerian Supreme Court has not voided a single Special Court conviction.

Legislative Decree 92-03 facilitates abuses under interrogation by extending to twelve days the legal time limit of *garde à vue* detention (incommunicado detention in the hands of security force interrogators) in cases of "terrorism" or "subversion".

Middle East Watch opposes the creation of specialized judicial bodies with limited jurisdiction when those bodies do not operate according to established procedures¹⁷ or guarantee due-process rights that meet minimum international legal standards. For these reasons, we urge Algerian authorities to halt trials before Special Courts, and to release or re-try those convicted in Special Courts before courts that provide adequate safeguards for a fair trial.

¹⁷ The Basic Principles on the Independence of the Judiciary, endorsed by the U.N. General Assembly in 1985, states in Article 5: "Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to ordinary courts or judicial tribunals."

In researching this subject, Middle East Watch sought to visit Algeria to observe trials before the Special Courts. However, the authorities ignored several written requests submitted during 1993 to permit a Middle East Watch delegation to enter Algeria. Because Middle East Watch was thereby denied access to the trials, it prepared this report on the basis of interviews with Algerian lawyers, human rights activists, journalists, and press reports.¹⁸

Algeria's Special Courts were established by Legislative Decree 92-03 of September 30, 1992 in order to "confront violence and terrorism with efficiency," according to HCE President Ali Kafi.¹⁹ When the decree was announced, thousands of suspected Islamists were being held in custody, including about 2,800 being held in detention camps without charge, according to the semi-official National Monitoring Body for Human Rights (*Observatoire National des Droits de l'Homme*, or ONDH). Most of the 2,800 had been held since the massive roundups of February and March of 1992. In addition, the authorities were holding large numbers of suspects who had been arrested in connection with the acts of political violence that had become almost-daily occurrences: these included ambushes of security force members, acts of sabotage against public property, and occasional attacks against civilians.

The main thrust of Legislative Decree 92-03's provisions was to facilitate quick trials of defendants suspected of participating in or supporting political violence, and to mete out tough sentences to those who were convicted. Defending the record of the Special Courts one year after their establishment, Minister of Justice Mohammad Teguaia told reporters that the objective had been to avoid delays in handling cases that, in ordinary courts, could take more than a year and-a-half. He added that up to 5,000 Algerians were currently being held in connection with terrorism cases; he did not specify whether these included both pre-trial and convicted prisoners.²⁰

¹⁸ See also Amnesty International, *Algeria: Executions after Unfair Trials: A Travesty of Justice*, October 1993.

¹⁹ Alluding to the impending creation of the Special Courts, Kafi said on September 20, 1992:

The High State Council will announce over the next few days new laws which will allow the competent authorities to confront violence and terrorism with efficiency...[T]hese laws which are directed against terrorism in all its forms are not intended to undermine political activities, freedom of expression, or the citizen's basic liberties in an atmosphere of peace and order.

[Algiers ENTV Television Network, as reported in FBIS, September 24, 1992.]

Speaking one month later, Kafi reiterated that the Special Courts were compatible with respect for fundamental rights:

Our determination to fight terrorism with every means, including special laws and courts, will never mean that we have abandoned our fundamental choices to build a state in which law rules – a state that protects fundamental freedoms and human rights and is committed to a fully independent judiciary which should be above all suspicions and above circumstantial political maneuvers.

[Algiers Radio Network, October 24, as reported in FBIS, October 27, 1992.]

²⁰ Algérie Presse Service, as reported in *Mideast Mirror*, November 1, 1993.

To date, as far as is known, all of the defendants brought before Special Courts have been suspected of participating in the Islamist resistance. (One potential exception is the case of three newspaper editors who were informed that they would be tried by a Special Court for having published in January 1992 an appeal from the FIS. The case is still under judicial investigation and has not been brought to trial. See below.)

The creation of the Special Courts was accompanied by the announcement of new military tactics against the armed resistance. The HCE created a large anti-terrorist brigade, composed of police, gendarmes (the police force operating outside of urban jurisdictions), and army personnel. On December 5, 1992, an indefinite nighttime curfew took effect in the northern central provinces, where the majority of the country's population lives, and the security forces began intensive operations to seek out militants. Some 4,000 suspected militants were arrested during the seven months following the announcement of the creation of the Special Courts and the anti-terrorist brigade, the Agence France-Presse reported on May 9, 1993. As this report went to press, the curfew remained in effect, and security forces continued to conduct intensive sweeps through Islamist strongholds.

The majority of those sentenced to death so far by the Special Courts have been tried *in absentia*, in violation of the right under Article 14 (3)(d) of the International Covenant on Civil and Political Rights to be tried in one's own presence. While a defendant can waive the right to be present at his or her trial, unless the defendant received adequate notice of the impending trial, failure to appear cannot be deemed a waiver of this right.

Middle East Watch is concerned about the high incidence of *in absentia* convictions, even though a defendant who surrenders or is apprehended subsequent to an *in absentia* conviction has a right to a new trial, according to Article 326 of the Code of Penal Procedure. The wholesale issuance of death penalties, even if most are later overturned, habituates people to what should, at most, be an exceptional penalty, applied only for the gravest offenses, in accordance with Article 6 of the International Covenant on Civil and Political Rights.²¹

In addition, there are grounds for fearing that the initial convictions of *in absentia* defendants will have a prejudicial impact upon second trials. Judges conducting the second trials, whether due to political pressure or deference to colleagues, may be reluctant to acquit defendants who have already been convicted. Given the huge number of *in absentia* convictions, a large proportion of acquittals in second trials would raise doubts about the fairness of the original trials. Moreover, the weakness of procedural safeguards in the Special Courts would seem to make the second trials that much more susceptible to pressure.

LEGISLATIVE DECREE 92-03

Legislative Decree 92-03 "Relative to the Struggle against Subversion and Terrorism" was dated September 30, 1992 and made public on October 4, 1992. In addition to establishing trial procedures of the Special Courts, the decree set forth penalties for crimes of "terrorism" and "subversion," as defined by the decree (see below).

²¹ See also the Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims at the abolition of the death penalty.

No courts of exception had existed since the abolition in April 1989 of the State Security Courts (*Cours de Sûreté de l'État*), a step heralded as an important reform at the time. However, military courts have functioned *de facto* as courts of exception since at least 1991, trying many civilian Islamists for politically motivated offenses, both violent and nonviolent.²² Like Special Courts, military courts provide defendants with fewer procedural safeguards for a fair trial, and more limited avenues of appeal, than do ordinary courts.

Legislative Decree 92-03 specified that the HCF's authority to set up the courts derived from the legislative powers it had arrogated to itself in a proclamation of April 14, 1992. (Algeria's legislative body, the National Assembly, had been dissolved in January 1992 by a presidential decree one week before the president himself was forced to resign.)

The decree created three Special Court jurisdictions, based in Algeria's largest cities, the capital of Algiers, Oran in the west and Constantine in the east.²³ The trial court is composed of five magistrates, one of whom serves as president and four as associates (*assesseurs*), as per Article 12.

Judges are named in classified presidential decrees on the basis of nominations by the Justice Ministry. Legislative Decree 92-03 set forth no professional qualifications for appointment to the Special Courts, or guidelines for composition of the Court. The panels of the Special Courts do not include members of the public serving as jurors, as do ordinary criminal courts in Algeria.²⁴ According to lawyers, the judges who have served on the Special Courts so far have been drawn from Algeria's corps of civilian magistrates.

When Legislative Decree 92-03 was announced, observers, including Algeria's two national human rights organizations, expressed concerns that its provisions posed a serious threat to human rights. Abdennour Ali-Yahia, president of the independent Algerian League for the Defense of Human Rights (*Ligue Algérienne pour la défense des droits de l'Homme*, or LADDH), stated that the decree "violated the Constitution as well as the conventions and international pacts that Algeria has ratified." The president of

²² The state of siege decree of June 4, 1991 empowered military courts to handle offenses against state security "irrespective of the status of their perpetrators or their accomplices." This constituted a derogation from the code of military justice, which limits the jurisdiction of military courts to cases where the perpetrator is a soldier, or the crime is desertion or disobedience, or the alleged offense occurs inside a military facility. The state of emergency decree of February 9, 1992 again empowered military courts to hear cases against state security, regardless of the status of the perpetrators.

Since 1991, military courts have tried many Islamists for such offenses as incitement and participating in illegal gatherings. The most closely watched trial of civilians before a military court was that of seven FIS leaders in 1992. The Blida military court handed down twelve-year sentences to FIS chief Abbasi Madani and deputy chief Ali Belhadj on charges of conspiring against state authority, causing harm to the economy, and distributing seditious tracts. The five other defendants received shorter sentences.

²³ The Special Court in Oran was the first to begin hearing cases, on February 22, 1993. The Algiers court began trying cases on March 3, followed by the one in Constantine on March 17.

²⁴ In accordance with the Code of Penal Procedure, articles 258 and 261-263.

the less outspoken Algerian League for Human Rights (*Ligue Algérienne des droits de l'Homme*, or LADH) called the decree "fundamentally reprehensible," although he went on to excuse it as "an exceptional measure that responds to an exceptional situation."²⁵

The human-rights concerns began with the first five articles of the decree, which define "a subversive or terrorist act" in a broad and vague manner that could include a variety of nonviolent actions, including speech and association. Article One states:

A subversive or terrorist act in the meaning of the current legislative decree is any offense directed at state security, territorial integrity, the stability and normal functioning of institutions through any action whose purpose is to:

sow terror in the population and create a climate of insecurity by causing harm to persons or placing their lives, liberty or security in danger, or causing harm to their property;

obstruct traffic or freedom of movement in public thoroughfares and places;

cause harm to the environment, means of communication or transport, public or private property, seize possession of these or occupy them unduly, desecrate burial places or attack the symbols of the Republic;

obstruct the actions of the public authorities or the free exercise of worship and of public freedoms, or the functioning of establishments that form part of public services;

obstruct the functioning of public institutions or harm the life or property of their agents, or impede the application of laws or regulations.

Article Two includes in the definition of "subversive or terrorist act" all offenses defined in subsequent articles. Article Three punishes association with "subversive or terrorist" groups, by life imprisonment for founders and leaders of such groups, and by ten-to-twenty year sentences for membership or participation. An April 7, 1993 amendment to the decree adds the offense of funding "terrorist" groups to the Special Courts' jurisdiction.

To date, the HCE has not published the names of any organizations that fall under the decree. In theory, membership in the FIS, which the government has accused of terrorism,²⁶ could therefore be grounds for a twenty-year sentence. However, lawyers interviewed by Middle East Watch were not familiar

²⁵ Agence France-Presse, October 6, 1992.

²⁶ For example, when asked in November 1992 who was responsible for the security tensions in the country, then-Prime Minister Belaid Abdesslam replied:

[The group that is carrying out these actions ... is linked to the dissolved so-called Islamic Salvation Front party. I believe that all the people know this. All these groups are under the umbrella of this one group.

(Interview on Algiers ENTV Television network in Arabic, November 21, 1992, as reported in FBIS, November 23, 1992.)

with any case of a Special Court convicting a defendant under Article Three on the basis of affiliation with the FIS.

Articles Four and Five are perhaps the most ominous provisions defining "subversion" and "terrorism," giving the authorities wide latitude to prosecute those accused of giving verbal support. Article Four states:

Whoever praises or encourages, by whatever means, acts referred to in Article One, is punishable by a prison term of five to ten years and a fine of 10,000 to 500,000 Algerian dinars (U.S. \$450 to 23,000 at the official rate of exchange).

Legislative Decree 92-03 contains no definition of praise or encouragement, and can easily be read to include news coverage or commentary or sermons critical of the government. Article Four does not limit the offense to publicly disseminated speech, and can thus refer also to private speech or correspondence.

Article Five targets written and recorded speech. It states:

Whoever knowingly reproduces or distributes documents, publications, or recordings that praise acts referred to in Article One, shall be punished by a sentence of five to ten years and a fine of 10,000 to 500,000 Algerian dinars.

To date, many defendants have been convicted under Article Five for producing or distributing underground tracts. But fears that Article Four or Five would be used to prosecute journalists have not materialized. The only case involving journalists that has come to the attention of Middle East Watch is that of three editors at the Arabic daily *El-Khabar* who were informed in June 1993 that a 1992 case pending against them, involving charges under Algeria's Penal Code and Information Code, was being transferred to an investigating judge attached to the Algiers Special Court. The case revolves around *El-Khabar's* publication on January 22, 1992 of a plea to soldiers by a FIS official to disobey orders to quell demonstrations against cancellation of the elections. The three editors are free on bail (see section below on the press).

Legislative Decree 92-03 also gives the Special Courts jurisdiction over minors aged sixteen years and above (Article 38). The courts can impose the death penalty on minors, although they are required to abide by Article 50 of the Code of Penal Procedure, which states that a minor who receives the death penalty shall be sentenced instead to ten to twenty years in prison.

VIOLATIONS OF DUE PROCESS DURING DETENTION

One of the disturbing provisions in Legislative Decree 92-03 is the extension of the legal limit of *garde à vue* detention to twelve days (Article 22). What is more alarming is that even this unacceptably lengthy limit has been routinely exceeded in cases involving suspected Islamist militants. Defense lawyers interviewed by Middle East Watch stated that suspects were often held in *garde à vue* for three weeks and occasionally for as long as two months.²⁷ The practice of holding suspects incommunicado for

²⁷ For example, Amnesty International documented the case of two brothers, Mohieddine and Ahmed Derouiche, who were arrested on July 19 and July 27, 1993 respectively, and were held in *garde à vue* detention until the third week of

long periods while under interrogation has facilitated the spread of torture and ill-treatment in Algerian detention centers.

A legal limit placed on the duration of incommunicado detention, the initial period during which the inmate is in the hands of the police or security forces and is likely to undergo interrogation, is a deterrent to abuse during detention for several reasons. First, it is during this initial period of interrogation that the likelihood of abuse has historically been highest in many countries, including Algeria. Accordingly, reducing the permissible length of such detention reduces the opportunity for abuse, and makes it less likely that traces of any violent mistreatment will have faded by the time the victim is seen by a judge or by relatives, a lawyer, or a physician.

Although international law provides no universally accepted time limit to *garde à vue* detention, the instruments that address the question clearly intend the maximum duration to be considerably shorter than the twelve days permitted by Legislative Decree 92-03.²⁸ The twelve-day limit, cannot be justified with reference to Algeria's announced derogation, upon declaring the State of Emergency, from Article 9(3), among others, of the International Covenant on Civil and Political Rights (see above).²⁹

Even before Legislative Decree 92-03 took effect, torture and ill-treatment of suspected Islamist militants during *garde à vue* had become common in Algeria, as Middle East Watch determined during its

August, when they were finally permitted to see their families. See Amnesty International's Urgent Action of August 19, 1993.

²⁸ The U.N. Standard Minimum Rules for the Treatment of Prisoners provides in article 92:

An untried prisoner shall be allowed to inform *immediately* his family of his detention and shall be given reasonable facilities for communicating with his family and friends and for receiving visits from them, subject only to such restrictions and supervision as are necessary to the interests of the administration of justice and of the security and good order of the institution. [emphasis added.]

The Standard Minimum Rules, adopted in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and subsequently approved by the Economic and Social Council, constitute the most comprehensive international agreement designed to establish standards for prison conditions. The Rules are recognized as a standard by governments and prison officials in a great many countries. (See The Human Rights Watch Global Report on Prisons (New York: June 1993, pp. 115-118.)

The U.N. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, in principle 15, provides that "communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days."

The most specific statement of the time limits can be found in the U.N. Basic Principles on the Role of Lawyers, in its principle 7:

Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

²⁹ Article 9(3) provides that anyone arrested or detained on a criminal charge shall be brought "promptly" before a judge. Article 4 states that derogations from the Covenant's provisions are permissible only "to the extent strictly required by the exigencies of the situation."

1992 mission.³⁰ The abuse occurred as suspects were held incommunicado by the security forces and interrogated for the purpose of providing information or signing a confession. Lawyers told Middle East Watch at the time that when they filed motions on behalf of their clients to protest the illegal prolongation of *garde à vue* detention, judges rarely responded with a serious investigation. The lawyers added that in some cases, police falsified the actual date of arrest so as to disguise the fact that they had been holding the suspect beyond the legal time limit.

Although not granted permission to visit Algeria in 1993, Middle East Watch continued to receive reports from human rights lawyers, doctors and others suggesting that this pattern of torture continued in 1993. There were reports of severe beatings and of interrogators choking defendants with wet rags placed tightly over their faces, as well as reports of the use of electric shock and other instruments of torture.³¹

Algeria's Code of Penal Procedure limits *garde à vue* detention to forty-eight hours, but allows its renewal for another forty-eight hours under specific circumstances (Article 65). In cases involving offenses against state security, the initial period, as well as the permissible extension, is doubled. If the police wish to prolong the detention they must bring the detainee, prior to the expiration of the initial period, before the state prosecutor (*procureur de la République*). After a hearing, the state prosecutor can authorize in writing another *garde à vue* period of the same duration as the initial one. In exceptional circumstances, the state prosecutor can grant an extension without a hearing.

Article 18 of Legislative Decree 92-03 states that the provisions of the Code of Penal Procedure will apply to the pre-trial procedures of the Special Courts unless otherwise specified. Thus, defendants, upon completion of *garde à vue* detention, are brought before an investigating judge, who reviews the evidence, questions the suspect about his statement to the police, and draws up a charge sheet.

Defense lawyers told Middle East Watch that the safeguards against using illegal methods of coercion to extract confessions essentially do not function in the Special Courts. According to the Code of Penal Procedure, defendants have the right to a lawyer when they are brought from *garde à vue* detention to the investigating judge. During this phase of the judicial process, they have the right to challenge their confessions to the police and note any procedural violations.

In addition, Article 51 of the Code of Penal Procedure provides that, at the end of *garde à vue*, a medical examination of the detained person must follow if he, his counsel, or his family requests it. The examination will be conducted by a doctor of the defendant's choice. The detainee is to be informed of this right by the investigating judge. Any defendant who believes he has been the victim of an abuse can file a formal complaint before the investigating judge (Article 72). The Penal Code provides penalties for police officers found to have violated the rights of detainees in *garde à vue* (Articles 110 and 110bis).

Lawyers told Middle East Watch that defendants facing trials before Special Courts often appear before investigating judges without their lawyers present. The lawyers are simply not informed of the hearing, or receive written notification of the hearing after it has already taken place. Lawyers told Middle

³⁰ See *Human Rights Watch World Report 1993* (New York: December 1992), 291.

³¹ For a recent account of a detainee choked using the wet-rag technique, see Catherine Simon, "Algérie: d'une violence à l'autre," *Le Monde*, November 25, 1993.

East Watch that investigating judges often fail to inform defendants of their right to a medical examination. When defendants do request an examination, that request is often ignored and not recorded in the dossier. Then, when the defendants claim during their trial that their confessions had been extracted under torture, trial judges have frequently refused to examine the allegations on the grounds that the proper moment to have raised them was before the investigating judge. Furthermore, by the time the trial begins, traces of physical abuse that were present shortly after *garde à vue* detention may no longer be detectible.

Defense lawyers told Middle East Watch that they were aware of no case in which a Special Court judge had ordered a medical examination or explicitly discounted a confession because of irregularities or abuses that took place during *garde à vue*. Judges sometimes allowed defendants to detail their allegations before the court, but then did not act upon them. (However, as one lawyer pointed out, allegations of abuse could have persuaded judges in some cases to acquit defendants, but since verdicts are rendered without written opinions, it is not possible to verify this.)

The failure of the Special Courts to investigate allegations by defendants that confessions were extracted through torture is a clear violation of Algeria's international obligations. Article 14(3)(g) of the ICCPR guarantees that the accused shall "not be compelled to testify against himself or to confess guilt." Article 15 of the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Algeria ratified in 1989, provides:

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

Article 13 of the Convention against Torture creates an affirmative duty on the part of the state to "ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities."

TRIALS BY ANONYMOUS JUDGES

Legislative Decree 92-03 raises several threshold problems regarding the accountability of the judges in the Special Courts. Article 17 requires that the identity of the president and judges in special court trials be kept secret, under penalty of a prison sentence of up to five years.

Algeria is not the first country to put "terrorism" cases before anonymous judges as a way of shielding them from violent reprisals. For example, the Government of Peru implemented a system of "faceless courts" earlier in 1993. Keeping a judge's identity secret creates obstacles to verifying the judge's professional competence and to exposing potential conflicts of interest that would merit the judge's disqualification from the case. These might include a relationship between the judge and the defendant, the prosecutor or any person who was allegedly harmed by the defendant. The secrecy requirement endangers the right of defendants to be judged by "a competent, independent, and impartial tribunal," as guaranteed by Article 14(1) of the International Covenant on Civil and Political Rights.

Article 35 of Legislative Decree 92-03 provides that when the Supreme Court quashes a verdict of a Special Court, the case is to be sent back for retrial before a Special Court composed of judges other than

the ones who originally tried the case. However, if the judges' identities remain secret, it is impossible to confirm whether the Court re-hearing the case is in fact differently composed. This problem has remained moot, since the Supreme Court has yet to quash a Special Court verdict.

LIMITS ON COURTROOM ACCESS

Legislative Decree 92-03 states that while Special Court trials are normally public, the judge can decide to hear all or part of the proceedings *in camera* (Article 32). The ICCPR, in Article 14(1), permits exclusion of the press and public from trials under certain exceptional circumstances. However, the decree provides no criteria for limiting closures of the courtroom to exceptional circumstances. This broad discretion accorded the court is troubling, since openness is an important means of ensuring a fair trial.

Lawyers and Algerian journalists told Middle East Watch that journalists have generally enjoyed good access to Special Court trials. With a few exceptions, both foreign and Algerian journalists, including ones from independent newspapers, have been permitted into the courtrooms. However, the families of defendants have encountered more restrictions: they have been excluded in many instances.

Despite the access given to the press corps, reporting on the trials is constrained by provisions of Algeria's Information Code and Penal Code that call for fines and prison sentences for showing disrespect for the judiciary or for verdicts reached by courts (see below, section on the press). In October, for example, the editor of the French-language daily *El-Watan* was sentenced under these statutes to one year in prison for an article describing public outrage over the acquittal by a Special Court of a suspected bomber (see section on Press Freedom.) At the same time, both Algerian newspapers and the foreign news agencies were able to report on the allegations of torture that many of the defendants made during the trials.

RETROACTIVITY OF SPECIAL COURT JURISDICTION

Legislative Decree 92-03 gives the Special Courts jurisdiction over offenses that occurred before the courts were established. Article 42 of the decree empowers the Special Court prosecutor to transfer to the Special Courts all cases under investigation or on trial before ordinary courts, when they involve offenses that fall under the ambit of the decree. The Special Courts have already tried cases dating as far back as 1990, and have handed down many death sentences for offenses committed before the decree was issued, and even before the State of Emergency was imposed.

However, lawyers told Middle East Watch that while the Special Courts retroactively apply procedures set forth in the decree, they have tried only those offenses, and imposed only those sentences, that were in effect at the time that the offense was committed. Thus, according to these lawyers, there has been retroactivity of procedure but not of offense or of penalty.³² International law more clearly prohibits retroactivity of penalty and of offense than it prohibits retroactivity of procedure. (See for example, Article 15 of the ICCPR.) Nevertheless, the intent behind the principle of nonretroactivity is violated when defendants find themselves facing trials that deprive them of many of the procedural safeguards that courts provided as a matter of law at the time that the offense was committed.

³² Article Two of Algeria's Penal Code states, "Penal law is not retroactive, unless it is less severe."

LIMITED RIGHT OF APPEAL

The Special Courts sharply limit the right of defendants to appeal verdicts. After the verdict and sentences are pronounced by the trial judge, the defendant's only avenue of appeal is an application to the Supreme Court to quash the verdict (Article 352). The Supreme Court cannot acquit a defendant; it can only quash the verdict and remand it to a Special Court composed of different judges. The Supreme Court cannot reexamine the facts of a case or rule on the competency of the Special Courts to hear the case in the first instance. It can only review procedural aspects of the trial.

While the same is true of the appeals process in ordinary Algerian courts, the lack of a substantive appeal of the verdicts and sentences issued by Special Courts is particularly troubling because of the frequency with which those tribunals have sentenced defendants to long prison sentences and to death.

To date, the Supreme Court has not quashed any of the many hundreds of convictions handed down by the Special Courts, according to lawyers interviewed by Middle East Watch. Nor has the Supreme Court issued written explanations to accompany its decisions on Special Court appeals.

While appeals are limited in scope, defendants may apply for clemency from the executive branch. The Chairman of the HCE, in effect the head of state, has commuted the sentences of some defendants before the Special Courts, including some whose sentences were reduced from death to life imprisonment. This option, however, cannot compensate for limitations on the defendant's right of appeal.

There is one area where the right to appeal is inferior in the Special Courts when compared to ordinary courts. Following the investigative phase but before going to trial, court cases in Algeria are reviewed and the formal charges ratified by an oversight body. Whereas decisions by the oversight chamber of the ordinary courts (*chambres d'accusation*) can be immediately appealed to the Supreme Court (Article 495(a) of the Code of Penal Procedure), the rulings of the oversight chamber of the Special Courts (*chambres de contrôle*) cannot be appealed, except as part of the overall appeal after the conclusion of the trial (Article 28 of the Decree).

DEADLINES TO COMPLETE TRIALS

While lengthening the permissible period of *garde à vue* detention, Legislative Decree 92-03 effectively accelerates the rest of the judicial process by imposing tight time limits on its various stages. The Special Courts were designed to avoid delays in cases that could drag on before the ordinary courts, as the justice minister openly acknowledged.

Article 14 of the ICCPR gives suspects the right to a trial that is both prompt³³ and "fair." But promptness must not be achieved at the expense of fairness. The time limits imposed on cases before the

³³ The ICCPR guarantees to every accused the right to be tried "without undue delay" (Article 14(3)(c)). International law dictates no specific time frame that is reasonable for all cases. Rather, what is undue delay depends on such criteria as whether the accused is released before his trial.

Special Courts raise concerns over their ability to make a determined and impartial effort to discover the truth. This is especially true of the many group trials that have taken place before the Special Courts, involving groups of fifteen or more defendants. It is difficult to believe that a court can fairly determine the guilt or innocence of large numbers of individuals in such brief periods, particularly when -- as is often the case -- confessions constitute the main body of evidence for the prosecution, and those confessions have been disavowed by the accused. To ensure a fair trial, such disavowals require the court to halt the proceedings and conduct an impartial inquiry into whether the defendants made their statements voluntarily during the investigative stage, and whether their right to have legal counsel and to request a medical examination were honored by the investigating judge.

The deadlines established by the decree are: three months for the investigative phase (Article 26), one month for the oversight chamber to review the investigation and draw up the final charge sheet (Article 27); one month for the trial court to reach the verdict (Article 29); and two months for the Supreme Court to rule on the appeal (Article 35).

In practice, the trial phase is often completed far more quickly, sometimes after two or three sessions lasting no more than a few hours each, even when multiple defendants are involved.

The very first Special Court trial, held in Oran, resulted in five death penalties, three five-year sentences and four acquittals. The trial took only two days, despite the fact that the defendants had contested the charges and claimed that their confessions had been extracted under torture.³⁴ They were charged with conspiring against state security, assassinating a gendarme and a policeman, and attempting to assassinate other security force members.

VIOLATIONS OF THE RIGHT OF DEFENSE

Protests by defense lawyers over the conduct of Special Court trials began as soon as the Algiers Special Court began functioning in March 1993. Lawyers representing the "Emir Noh group," the first group of defendants to be tried before the court, withdrew from the trial three times (see below). Discontent among defense lawyers swelled into a massive boycott of the Special Courts after an amendment to Legislative Decree 92-03 was announced on April 7 that gave the courts considerable power over defense lawyers. The amendment was needed, according to a government spokesman, because some defense lawyers were obstructing trials by using "delay tactics." The amendment would, the spokesman said, "permit the Special Courts to fulfil their mission effectively."³⁵

The amendment provided that all defense lawyers would be subject to approval by the Special Court. It also expanded the powers of the President of the Court, as set forth in Article 31 of Legislative Decree 92-03, enabling the President to expel any party from the courtroom, temporarily or permanently, "in the event of disturbances." Further, the amendment stated that any breach of professional obligations by a defense lawyer could lead to temporary or permanent expulsion from the courtroom, or disbarment for a period of three months to one year.

³⁴ Agence France-Presse, February 22, 1993.

³⁵ Agence France-Presse, April 7, 1993.

The National Organization of Algerian Lawyers (ONAA) demanded that the government abrogate the amendment's provisions in view of the "dangerous precedent" they set for the legal profession. On May 7, attorneys in the eastern city of Annaba announced a boycott of the Special Courts. Over the next few days, boycotts were announced by the bars of Constantine and Algiers, and most of the country's other big cities. Trials already in progress, such as the "Airport" trial (see below), proceeded in the absence of both the original defense lawyers and their court-appointed replacements, who also honored the boycott.

The boycott ended in mid-May following meetings between representatives of the Bar and the Justice Ministry. Although no agreement was confirmed by officials, it was reported that the Justice Ministry had promised that the provisions of the amendment would not be enforced if the lawyers agreed to end their boycott of the Special Courts. Authorities denied having made such an agreement,³⁶ but the Courts have, according to defense lawyers, largely declined to use the powers provided by the amendment. Several lawyers who had been provisionally suspended for taking part in the boycott have not been prevented from working.

A number of lawyers still refuse to plead before the Special Courts, on the grounds that they do not provide defendants with fair-trial guarantees. Lawyers affiliated with the Algerian League for the Defense of Human Rights (LADDH), for example, have on these grounds refused to plead before the Special Courts.

The powers granted to the president of the Special Court by the amendment to the decree violate international standards. For instance, the U.N. Basic Principles on the Role of Lawyers, states in Article 19:

No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

This stipulation is reaffirmed by the draft United Nations Declaration on the Independence and Impartiality of the Judiciary, Jurors and Assessors, and the Independence of Lawyers. The draft declaration requires that a lawyer's exclusion, suspension, disqualification or disbarment be subject to independent judicial review (Article 86). It also states that if proceedings are initiated against a lawyer for failing to show proper respect towards a court, no sanctions may be imposed by a judge who participated in the proceedings which gave rise to the charge against the lawyer, except that the judge or judges concerned may, in such a case, suspend the proceedings and decline to continue hearing the case concerned (Article 88).

TRIAL OF THE "EMIR NOH" GROUP

The trial of Allam Abdennour, an Islamist militant leader known as "Emir Noh," and fifty co-defendants, illustrated some of the violations of defendants' due-process rights that are endemic in the Special Courts.

The trial opened on March 3, 1993. The defendants, some of whom had been in custody since 1990, faced charges that included blowing up buildings, killing a gendarme, illegal possession of firearms,

³⁶ Agence France-Presse, May 17, 1993.

stealing explosives, and forming armed groups. Eleven of the defendants were tried *in absentia*.

During the course of the trial, defense lawyers withdrew three times to protest a host of due-process violations. The first withdrawal came in response to an announcement that the proceedings would be held *in camera*. When the session resumed a few days later, defense lawyers objected that they had received the case dossiers only on the day before the trial, and had been denied adequate access to their clients. They also protested the Court's failure to register the above-mentioned objections prior to the reading of the charges against the defendants. These procedural violations prompted the lawyers to walk out again.³⁷

The defense lawyers returned, only to withdraw a third time after many of the defendants were injured in what the gendarmes described as a disturbance that broke out when the prisoners were being transported between the courtroom and the prison.

The lawyers returned to the court in response to an order from the bench, but walked out again shortly thereafter in a show of solidarity with a lawyer who had withdrawn after a heated exchange with the judge over a procedural point. The judge then resumed the trial in the absence of the defense lawyers, although they ultimately returned to the trial.

Allam denied all of the charges against him, and contested his own confession. The judge dismissed this claim on the grounds that the defendant had failed to raise it at an earlier stage of the procedure.

On March 20, the verdicts were announced: nine death sentences, including three in absentia, two life sentences, two fifteen-year sentences, numerous shorter prison sentences, and one acquittal. On August 11, it was announced that the Supreme Court had confirmed seven of the death penalties. On October 11, seven of the defendants were shot by a firing squad.

THE "AIRPORT TRIAL"

The most highly publicized Special Court trial to date was that of fifty-five defendants accused of participating in the bombing at the Houari Boumediene International Airport in Algiers on August 26, 1992. The bomb killed nine persons and injured more than one hundred others.

The trial opened before the Algiers Special Court on May 6, with twenty-six persons being judged in absentia. In addition to charges relating to the fatal bombing, defendants were charged with inciting citizens to take up arms against state authorities, leading armed gangs, aggravated theft and possessing and circulating inciting cassettes.

Defense lawyers objected at the opening of the trial that the prosecution had joined a number of unrelated cases in the same proceedings. The Court agreed to a separate trial for Ali Zouita, a lawyer and elected FIS parliamentarian, and three other co-defendants. However, the Court refused to separate the cases of Rabah Kebir, the spokesperson of the FIS in exile, and of three sons of Abbasi Madani, the

³⁷ Agence France-Presse, March 6, 1993.

imprisoned leader of the FIS. All four were tried in absentia and sentenced to death. One of Madani's sons was reportedly arrested around September 1 inside Algeria, and is to face a new trial.

Before the trial court, all of the defendants present disavowed the confessions that they had made to the police. Many described in detail the torture they said they had undergone while under interrogation. One of the principal defendants, Saïd Soussene, the elected vice-president of a municipal council in Algiers, claimed that he had actually been arrested six days before the bombing and held in police detention for fifty-one days. He claimed that as a result of being tortured, "I ended up saying anything to escape the abuse." The date of his arrest reportedly was missing from his case dossier.

On October 1, 1992, seven months before the trial, Soussene and three of the other principal defendants in the case, Hoceine Abderrahim, Rachid Hechaichi and Mohammed Rouabhi, were shown on state-controlled television confessing to being the ringleaders of the airport bombing. Their confessions were broadcast on the same day that the government announced arrests in the five-week-old investigation into the incident. The broadcast of their confessions in this extremely highly charged case constitutes a violation of their right to be presumed innocent, a right guaranteed in the Algerian Constitution as well as in Article 14(2) of the International Covenant on Civil and Political Rights.

At the trial itself, Soussene and the three others all disavowed their confessions, alleging that they had been extracted under torture. Another alleged leader, Mohammed Imat, testified that the police had threatened him with reprisals if he recanted his confession before the investigating judge.

Viewers of the televised confessions in October 1992 had noticed bruises on the head of Hoceine Abderrahim. During the trial, the prosecutor dismissed these bruises as the product of a suicide attempt made by Abderrahim when he discovered that he was being filmed. Another defendant claimed the police had "destroyed" his genitals during thirty-three days of torture. Only one defendant, Mansouri Meliani, admitted before the trial court to having participated in the armed resistance, but denied any role in the airport bombing. Meliani, Imat, and the four men whose confessions had been televised were among those put to death on August 31.

The prosecution introduced little evidence other than the confessions of the defendants. The defense asked that the confessions be discounted because they had allegedly been extracted through torture. The trial judge responded that such allegations should have been raised before the investigating judge. Some of the defense lawyers said that they had done so, but claimed that the investigating judge had not acted on their complaints. In the end, the trial judge refused the demands of the defense to order medical examinations of the defendants.

During portions of the three-week-long trial the defendants were unrepresented. On May 11, defense lawyers withdrew when the Algiers Bar Association decided to boycott the Special Courts to protest the amendment to Legislative Decree 92-03. The proceedings continued, however, with the judge reading to the Court the defendants' statements to the police and investigating judge.

In his closing arguments, the prosecutor demanded the death penalty for fifteen of the defendants. On May 26, the Court handed down thirty-eight death sentences, including twenty-six in absentia. Most were convicted of indirect participation in the bombing or of offenses such as inciting others to take up arms against state authorities and membership in armed groups. The remaining defendants were given sentences of between one and twenty years' imprisonment, and three were acquitted. Seven of those

sentenced to death were executed on August 31; the death sentences imposed on some of the others were commuted by the president of the HCE.

PRESS FREEDOM CURBED

Algeria's press, heralded only three years ago as one of the liveliest in the Arab world, has been under siege since the 1992 coup. Over the past years, the pressure has come not only from the regime but also from those seeking to overthrow it.

The government has largely prevented both local and foreign media from providing independent coverage of the biggest story of the day: the political violence wracking the country. It has achieved this by suspending newspapers, intimidating and filing charges against journalists, and exploiting its control over the public-sector enterprises on which virtually all media rely: printing presses, distribution agencies, providers of newsprint, purchasers of advertising, and state banks that extend credit.

Meanwhile, seven journalists have been assassinated since May 1993 in attacks believed by many to be the work of armed Islamist groups. Although responsibility for none of the attacks has been explicitly claimed, unidentified groups have issued warnings to journalists who have reported critically on the Islamist movement, and a spokesman of the FIS in exile, Anouar Haddam, has implicitly justified retribution against those who write "murderous editorials."³⁸

The pressures facing the profession are best exemplified by Omar Belhouchet, editor-in-chief of *El-Watan*, a respected independent French-language daily launched in 1990 by former staff members of the ruling party's daily *El-Moudjahid*. After receiving several death threats since 1991, Belhouchet became the first journalist to be the target of an apparent assassination attempt during the current cycle of violence. On May 17, 1993, while driving his children to school in the Algiers suburb of Bab Ezzouar, the editor's car was hit by three bullets.

Belhouchet has also faced pressures from the government, which has hauled him into court at least twenty times, by his own count, since 1992, in connection with articles appearing in the newspaper. In October 1993, he was given a one-year prison sentence, currently on appeal, for defaming the judiciary, in connection with an article that covered public outrage over the acquittal in a Special Court of a suspected terrorist. In January 1993, he and several colleagues were jailed for a week and *El-Watan* was suspended for ten days, for having published a story on the slaying of five policemen before the state news agency had covered the incident.

Among the members of Algeria's intelligentsia who have been assassinated during the past year by armed groups, the profession of journalism has provided the highest number of victims. In fact, more journalists were assassinated in Algeria than in any other country during the first eleven months of 1993, with the exception of the Russian Federation, where seven journalists died during the violence surrounding the siege at the Kremlin in October. Some of the victims worked for state media, others for independent organs. The news organizations for which they worked ranged in prominence from the national television channel to obscure regional weeklies. Some worked in French, others in Arabic; some were unemployed when killed. Several of them had reported or commented critically on the Islamists; in other cases, a motive for their murder was less apparent.

Terrified by the violence, many journalists have altered their work and travel routines, and have

³⁸ Agence France-Presse, October 18, 1993, and in an interview in Washington with Middle East Watch, September, 23, 1993.

asked to have their bylines omitted from stories and columns. *El-Watan's* Ahmed Ancer wrote recently, "Living in working-class neighborhoods and developments, [journalists] are known and easily spotted. Many have gone into a kind of clandestinity, no longer going home, and continuously changing where they stay." Some newspaper editors have moved to France, where they communicate with their staff by phone or fax. Anonymous death threats against journalists have multiplied. According to Ancer:

Harassment via telephone, at the newsroom and at home, is now commonplace. Sometimes the journalist senses that there is someone at the other end of the line when he picks up the telephone, but no one speaks. The phone rings again shortly afterward, and it's the same thing. Or, sometimes, there is someone on the line, who asks for a particular person and makes death threats and insults.

The mail is full of them. *El-Watan* has received hundreds. Other newspapers confront the same phenomenon. Terrorists and their networks use the mail in attempting to cause anguish and terror. The lists of those "condemned to death" multiply from month to month. They are sometimes accompanied by photographs cut out of newspapers showing victims and journalists targeted in previous attacks.³⁹

The first journalist killed in Algeria's political violence was Tahar Djaout, co-founder of the weekly *Ruptures*. Djaout was gunned down on May 26 in front of his house in an Algiers suburb, as he was leaving for work. He died from the wounds seven days later. Djaout, who had denounced Islamist intolerance in his writings, had received several death threats in the past.

Since the assassination of Djaout, six other journalists have been murdered. They are:

- Rabah Zenati, a reporter with the state's Enterprise Nationale de Télévision (ENTV), killed by a bullet in the head on August 4 in Chézarba;
- Abdelhamid Benmeni, on the staff of the weekly *Algérie Actualité*, killed on August 9 by three armed men wearing hoods, at his home in Chézarba;
- Saad Bakhtaoui, former journalist with the bimonthly *El-Manbar* (the Tribune), kidnapped by four men in a vehicle on September 10; his body was discovered the following day in Larbaa, southeast of Algiers;
- Djamel Bouhidel, a photographer with *Nouveau Tell*, a regional, French-language weekly, killed in Blida on October 5;
- Mustapha Abada, ENTV's director until August, shot dead in Ain Taya on October 14; and
- Smail Yefsah, assistant news director at ENTV, stabbed and then shot to death outside his home in Bab Ezzouar on October 18.

Another journalist, Merzak Baghtache, survived after being shot in the neck on July 31 in the Bab el-Oued neighborhood of Algiers. Others have since narrowly escaped attacks.

It is difficult to pinpoint responsibility for these attacks. In the case of Tahar Djaout, the police announced that it had killed two Islamist militants and arrested a third implicated in his murder. According

³⁹ "La Liste Noire," October 19, 1993.

to an Agence France-Presse report of June 2, the latter confessed before television cameras that a leader of an armed group, identified as Abdelhak Layada, had ordered the assassination of Tahar Djaout because he "was a communist and had a fearsome pen that wielded influence in Islamist circles." It was not possible to ascertain the voluntariness of this confession; confessions in Algeria are suspect sources of information because they are frequently extracted through torture or other mistreatment.

The campaign of violence against journalists is foremost on the minds of many in the profession. But the government shares a large measure of blame for the erosion of press freedom since the 1992 coup. Its varied measures against the press were denounced in a May 3, 1993 statement of the Algerian Journalists Association as aiming "at returning to a single press, restoring censorship, taming independent newspapers and turning the public press into an information tool at the exclusive disposal of the executive."

In spite of its repressive record, the regime continues to cite its respect for press freedom as one of the justifications for its having cancelled the elections. "Democracy is about more than elections," Nourredine Zerhouni, the Algerian ambassador in Washington, said in May 1993. "It's about free speech, free association, freedom to worship in your own way and freedom of the press. We are protecting all those against people who would use the electoral system to take them away."⁴⁰

This theme was reiterated by Prime Minister Redha Malek shortly after he took office. Meeting with the directors of publicly and privately owned press establishments on September 16, 1993, Malek said, "If we want to make progress and continue the march of democracy, we ought to preserve and consolidate free speech."⁴¹

It is difficult to give much credence to these professions of commitment to press freedom. Since it cancelled the elections in January 1992, the regime has suspended daily newspapers at least eight times, arrested over thirty journalists who work for secular publications⁴², narrowed the range of coverage and commentary on the state broadcast media, restricted the entry of foreign journalists, and severely limited the ability of the newspapers to report and comment on the internal security situation. While Prime Minister Malek did not suspend any newspapers during his first three months in office, he also did not permit the reappearance of some of those suspended before he assumed his post, such as the daily *Djezair el-Youm*.

The reader of independent and party-controlled newspapers in Algeria does not get a remotely accurate impression of the extent or the brutality of the security forces' repression of Islamists. The fault does not rest solely with government press restrictions and pressures. The reporting also reflects the evident hostility of most Algerian journalists toward militant Islam. Violence attributed to the Islamists tends to receive prominent coverage, in contrast to abuses committed against them by the authorities. The

⁴⁰ Thomas W. Lippman, "Arab States Battling Muslim Militants Counter U.S. Stance on Rights," *Washington Post*, May 30, 1993.

⁴¹ Algiers ENTV Television Network in Arabic, September 16, 1993, as reported in FBIS, September 17, 1993.

⁴² Several journalists who worked for Islamist publications were arrested in January 1992. The number arrested since that time is not known.

press, for example, regularly carries reports of security-force operations in urban neighborhoods in which several "terrorists" are killed, without probing who the actual victims were, whether they were armed, or how they died. Except for reporting on testimony given by defendants at trials, the press has all but ignored the question of torture in detention.

Outside the security arena, the independent and party-affiliated papers continue to comment in a lively and critical fashion on Algeria's social ills and on government policies. And while journalists have been briefly jailed and newspapers suspended, no journalist was forced to serve a prison term during 1993 for the contents of an article, and almost all suspended publications were later permitted to resume publication (see below).

Nevertheless, in the view of Middle East Watch, Algeria's restrictions on press coverage go well beyond what is permitted by international law. The International Covenant on Civil and Political Rights states in Article 19(2):

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art, or through any other media of his choice.

The Covenant allows certain restrictions on this right, including for the protection of national security or of public order (Article 19(3)(b)). Derogations are also permitted in the event of "a public emergency which threatens the life of the nation and the existence of which is officially proclaimed...to the extent strictly required by the exigencies of the situation." (Article 4(1)).

The Government of Algeria complied with the procedures outlined in Article 4(3) for derogations by informing the United Nations Secretary-General of the imposition of the State of Emergency. The notification, dated February 13, 1992, stated that the Emergency Decree, "which is aimed essentially at restoring public order, protecting the safety of individuals and property and ensuring the normal operation of institutions and public services, does not interfere with the democratic process inasmuch as the exercise of fundamental rights and freedoms continues to be guaranteed."

But international jurisprudence suggests strongly that even where one finds "a public emergency which threatens the life of the nation," a government cannot simply equate its own perpetuation with the "life of the nation." The European Commission of Human Rights, interpreting the identical language of Article 15 of the European Convention on Human Rights,⁴³ concluded that the threat to the "life of the nation" must, in its magnitude, involve the whole nation.⁴⁴ This characterization can refer with equal justification to the application of Article 4 of the International Covenant on Civil and Political Rights.⁴⁵

Seen in this light, most of the Algerian Government's actions against the press since 1992 seem primarily designed to inhibit criticism of government officials and institutions, and to muzzle independent

⁴³ European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221, E.T.S. 5 (1950).

⁴⁴ *Greekcase*, 12a *Y.B. Eur. Conv. Human Rights* para. 153 (1969).

⁴⁵ Buergenthal, "State Obligations and Permissible Derogations," *The International Bill of Rights*, 80.

reporting and commentary on the internal security situation. These actions go well beyond the "extent strictly required by the exigencies of the situation." Contrary to what might have been expected, most -- but not all -- of the publications that the government has punished exhibit little editorial sympathy for the Islamist opposition.

The repression since 1992 is that much more regrettable when it is compared to the hopeful period that preceded it. In the aftermath of the October 1988 riots, the state and ruling party ended their monopoly over the media, and dozens of independent dailies, weeklies, and opposition party organs were launched. The press explosion was assisted by a government offer of three years salary to journalists who had been employed in public-sector media — that is, virtually everyone — if they moved to independent papers.⁴⁶ Radio, television, and the main news agency remained in state hands, but they broadened their coverage to include hitherto taboo subjects, such as Berber nationalism, and provided access to opposition politicians, including the leaders of the FIS.⁴⁷

The openness of the broadcast media was one of the first casualties of the 1992 state of emergency. Two weeks after its imposition, the television employees' union assailed "the return of censorship" at the country's sole television station.⁴⁸ The situation has not improved since then: television, radio, and the state news agency have largely reverted to their former role as state mouthpieces. Opposition parties lack fair access to the state media, and coverage of clashes is largely limited to displays of arrested "terrorists" and the official accounts of incidents, enhanced by tendentious commentary, such as in this report from December 1992:

The crime that led to the death of five policemen in Kouba yesterday has not passed without punishment ... In a very short time the perpetrators of the crime were punished harshly. The security forces have wiped out completely the planners and executors of that vile crime with the help of loyal citizens. No disturbance of public security will pass without deterrent action.⁴⁹

This brand of reporting runs counter to the 1990 Information Code, which, while providing for continued state control over the broadcast media and the Algérie Presse Service (APS) news agency, required them to "assure equal access to expression for currents of opinion and thought," and "under no circumstances, to take into consideration influences or considerations that would compromise the accuracy of information." (Article 10).

State broadcasting's reversion to propaganda has enhanced the popularity of European, and especially French, television stations, which are captured via satellite. Throughout much of northern

⁴⁶ Bradford Dillman, "Transition to Democracy in Algeria," in *State and Society in Algeria*, ed. by John Entelis (Boulder, CO: Westview Press, 1992), 46.

⁴⁷ See Anne Dissez, "Still under the Influence," *Index on Censorship*, May 1992; and Geneviève Delaunoy, "La presse algérienne et les fantômes de la liberté," *Le Monde Diplomatique*, May 1992.

⁴⁸ Agence France-Presse, February 24, 1992.

⁴⁹ Algiers ENTV Television Network in Arabic, December 15, 1992, as reported in FBIS, December 16, 1992.

Algeria, residents of apartment buildings and sometimes of entire neighborhoods form collectives to purchase and maintain satellite equipment. An estimated fifteen million Algerians watch foreign television, according to one study.⁵⁰

The 1990 Information Code has been the basis for much of the pressure on the printed press since 1992. Dubbed the "Penal Code Part Two" by journalists, the Code contains a number of provisions that are at variance with the 1989 Constitution's guarantee of freedom of expression.⁵¹ For example, Article 86 provides five-to-ten-year prison sentences and fines for deliberately publishing or spreading "false or misleading information capable of harming national order or state security." Article 87 states:

The incitement by means of any information media to crimes or misdemeanors against state security or national unity, when the incitement produces these consequences, shall subject the director of the publication and the author of the offending article to penal sanctions as accomplices to the crimes and misdemeanors that are committed. If the provocation produces no consequences, the director and the author shall be punished by imprisonment of one to five years and a fine of 10,000 to 100,000 dinars, or one of the two.

Article 88 punishes anyone who publishes information containing any "national defense secrets." Article 89 punishes anyone who publishes information "that endangers the confidentiality of an investigation or judicial investigation of a crime or infraction." The Code also provides, in Article 43, that whenever charges are filed against a journalist for an infraction, the director or editor of the offending publication shall be liable as an accomplice.

The Penal Code has been used frequently to prosecute journalists for defaming state institutions and agencies. Article 96 provides that anyone who disseminates, with an intent to persuade others, material "that may harm the national interest," is subject to a prison term of up to three years and a fine of up to 36,000 Algerian dinars (approximately U.S. \$1,800 at the official rate). Article 144 provides that anyone who wilfully causes grave offense to employees of the government, including members of the judiciary, in terms of the performance of their duties, shall be subject to a sentence of up to two years in prison and a fine of up to 5000 Algerian dinars (approximately U.S. \$250). Article 146 provides the same punishments for giving grave offense to state institutions, and Article 147 provides the same punishments for acts or words that "aim to discredit judicial decisions and that may harm the authority and independence of the judiciary." Several journalists who have criticized the regime or the courts have been charged under these articles.

Legislative Decree 92-03 Relative to the Fight against Subversion and Terrorism also contains a number of provisions that can serve as the basis for prosecuting journalists. The decree begins by defining

⁵⁰ Agence France-Presse, November 15, 1993.

⁵¹ The Constitution, which remains in effect despite the State of Emergency, states in Article 35, "Freedom of conscience and freedom of opinion are inviolable."

Article 36 states: "A citizen's freedom of intellectual, artistic, and scientific creation is guaranteed. The rights of the author are protected by the law. The confiscation of any publication, recording or other means of communication can be carried out only through by a court order."

Article 39 states: "A citizen's freedom of expression, association and meeting are guaranteed."

"terrorism" and "subversion" in a broad fashion, to include, *inter alia*, acts "directed at state security, territorial integrity, the stability and normal functioning of institutions" whose purpose is to "impede the functioning of public institutions or harming the life or property of their agents, or impeding the application of laws or regulations." Article 4 of the Decree states:

Whoever expresses sympathy for, or who encourages by whatever means the acts described in Article 1, is punishable by five to ten years imprisonment and a fine of 10,000 to 500,000 Algerian dinars.

This article goes well beyond Article 87 of the Information Code, by punishing not just "incitement" but also "expressions of sympathy" for, and "encouragement" of proscribed acts. Article 5 states:

Whosoever knowingly reproduces or distributes documents, printed matters or recordings that express sympathy for acts described in Article 1, is punishable by imprisonment of five to ten years and a fine of between 10,000 and 500,000 dinars.

Although no journalists have been tried by a Special Court for articles they wrote or published, three editors at the independent Arabic daily *El-Khabar* have been informed that charges against them dating to January 1992 have been transferred to an investigating judge attached to the Algiers Special Court. *El-Khabar* Director Mohammed Sellami, Editor-in-Chief Zaidi Sekia, and Assistant Editor-in-Chief Abdelhakim Belbatti had been charged with violating Articles 86 and 87 of the Information Code for having published a public announcement on January 22, 1992 from FIS leader Abdelqader Hachani urging soldiers to disobey orders to quell demonstrations against cancellation of the elections.⁵² The three editors are free on bail pending trial.

In January 1993, the government announced the imposition of prior censorship. Although no formal procedures were ever implemented, the declaration in all likelihood increased pressure for self-censorship. The announcement came just after the government had suspended *El-Watan* and arrested six of its journalists for "prematurely" reporting on a security incident.

Even in the absence of formal censorship, both independent and governmental newspapers lean heavily on the terse dispatches of the official Algeria Presse Service (APS) for news of security incidents. APS reports on confrontations between security forces and armed Islamists provide few details of how the confrontation took place, rarely cite eyewitness testimony, and provide little information as to how individuals were killed or wounded.

The incident that triggered the announcement of prior censorship began with a January 2, 1993 report in *El-Watan* on a December 31 raid on a barracks in Laghouat in which five gendarmes were slain and arms were stolen.⁵³ Authorities promptly arrested *El-Watan* editor Omar Belhouchet and five colleagues. Government spokesman Messaoud Aït Chalaal announced the indefinite suspension of the daily for

⁵² Karim Aït-Ouméziane, "Une tournure inattendue," *Le Matin (Algiers)*, June 22, 1993. Hachani has now been detained for nearly two years without trial since the incident.

⁵³ On October 27, the state radio announced that the Ouargla Military Court had sentenced eighteen Islamists to die for their role in the fatal assault.

"prematurely revealing information that seriously obstructed the course of an investigation of a criminal act perpetrated inside a facility covered by National Defense confidentiality." He stated that all information on Algeria's security situation would be subject to an "embargo" and publishable only after "the agreement of competent services."

The six journalists were released after one week and the paper was permitted to resume publishing after two weeks. However, the journalists were charged with violating Articles 86, 88 and 89 of the Information Code, and Articles 69 and 75 of the Penal Code.⁵⁴ The case against the journalists is still under judicial investigation, and some of the charges initially filed against them are pending.

While there is no formal system of prior censorship in place, journalists who investigate and try to publish details of security incidents or of human rights abuses risk running afoul of the various laws cited above that limit reporting on security matters and state institutions. Even attempting to check rumors puts journalists at risk of being accused of "disseminating false news." In December 1992, Djamel Fahassi, a reporter with Algiers Radio Three, was dismissed for phoning the Reuter news agency to check a report on the assassination of a member of the commission of inquiry into the killing of President Boudiaf. Fahassi, a well-known reporter with Islamist sympathies, has not been rehired. In March 1993, the Reuter bureau chief at the time, John Baggaley, was himself held for eighteen hours after filing a report that the government said was untrue about the assassination of an official.

Incidents such as these, and the *El-Watan* affair in January, have dissuaded most journalists from exercising initiative when it comes to reporting on security matters. Since spring 1993, most of the government actions against the press have focused not on news of security incidents, but rather on items that contained criticism of the regime.

On April 7, Abdelhamid Benzine, the director of the leftist, secular *Alger Républicain*, was arrested for writing that the courts were being too lenient with "terrorist" defendants. He was released after being accused of "attacking state institutions."

Benzine's arrest had repercussions also for *El-Watan*, which published on April 24 criticism of Benzine's arrest from Hachemi Cherif, leader of the leftist *Ettahadi* party. Hachemi was quoted as having said that the arrest of Benzine "is not an innocent judicial act, but, rather, a political act. The only conceivable explanation is to have him assassinated in prison."

Following *El-Watan*'s publication of this interview, Hachemi was arrested, along with *El-Watan* editor Omar Belhouchet and journalist Cherif Ouazani. They were accused by the investigating judge of "endangering state security," "endangering national unity" and "incitement to crime" -- charges based on Articles 86 and 87 of the Information Code and Article 96 of the Penal Code. The prosecutor demanded a six-month sentence for the three defendants.

⁵⁴ **Article 69 provides prison sentences of up to five years for revealing, without intent to commit treachery or espionage, "military information that had not been made public by a competent authority the disclosure of which manifestly could harm national defense." Article 75 provides prison sentences of up to ten years, to whoever, in time of peace, participates knowingly in an action that is demoralizing to the army and whose purpose is to harm national defense.**

In an Algiers court, Hachemi justified his remark by saying that he was not implying that the regime intended to murder Benzine. Rather, he said, he wished to underscore the physical dangers that the secularist Benzine would face if he were imprisoned in the company of Islamist extremists. Belhouchet testified that his newspaper was open to all political opinions. "I will not tolerate censorship of a political party who expresses an opinion."⁵⁵

On June 8 1993, the court convicted the defendants of insulting members of the judiciary and attacking state institutions, and gave them two-month suspended sentences. The court dropped the more serious charges relating to incitement and endangering national security. During the month prior to the verdict, the two *El-Watan* journalists had been barred by a court order from writing, working in their profession, and making any declarations to other press organs. They were also required to register with the authorities once a week.

The court's power to ban defendants from practicing their profession is derived from Article 125bis of the Code of Penal Procedure. This article allows a judge to order defendants under his or her authority "to refrain from certain professional activities when the infraction was committed while exercising, or at the time of exercising, these activities, when there is reason to fear that a new infraction will be committed."

A ban on practicing the profession had been imposed on April 28 on another journalist, *L'Hebdo Libéré* general director Abderrahmane Mahmoudi. An outspoken critic of the policies of then-Prime Minister Belaïd Abdesslam, Mahmoudi had been charged with endangering national unity, endangering state security, and attacking state institutions.

A similar ban was imposed on the General Director of the Arabic-language daily *El-Djezaïr el-Youm*, Ali Draa, and its two editors-in-chief, Bachir Hammadi and Abdallah Bechim, in September. They were being investigated on charges of attacking state institutions and decisions of the judiciary in the newspaper. The three were also required to register weekly with the authorities and were prevented from leaving the country. Draa had also been forbidden to leave the country in May.

The newspaper *El-Djezaïr el-Youm* has been prevented from publishing since being suspended in late July 1993. Although the government did not provide a reason for the suspension, observers pointed to an advertisement the paper had run from an organization called Islamic Algerian Solidarity, warning against further executions of Islamists.

El-Djezaïr el-Youm was also suspended twice during 1992. Authorities briefly suspended it in December of that year for having "published articles that aimed to discredit the symbols of the state and give a voice to those seeking to destabilize the country." The offending articles were not specified. The daily was also suspended from August 9 until November 1992 for what the government called "the systematic publication of unfounded and malicious information that aims at deliberately sowing doubt and confusion in public opinion, undermining national unity and provoking *fitna* [civil war]." The offending items were not specified at the time of the suspension.

Two French-language dailies, *Le Matin* and *La Nation*, were suspended, along with *El-Djezaïr el-*

⁵⁵ F. Métaoui, "Affaire Hachemi Cherif — El-Watan: Deux mois avec sursis," *El-Watan*, June 9, 1993.

***Youm*, on August 9, 1992. The government accused the two of publishing erroneous information that jeopardized "the country's stability and the credibility abroad of the Algerian state."⁵⁶ *La Nation* was accused of endangering state security by publishing on July 26 an article that reported incorrectly that the government had arrested the leader of the Touareg minority in southern Algeria. According to authorities, the report in *La Nation* sparked tension among the Touareg. *Le Matin* was accused of (1) erroneously reporting on August 8 that Italy had frozen its loans to Algeria as a result of statements made by the Prime Minister; and (2) publishing in an August 6 news story the address of two government officials who were allegedly going to be attacked by alleged militants who had just been arrested. Divulging their address, according to the government, endangered the personal security of these officials.**

In late July, *Le Matin's* director, Mohamed Benchicou, spent two days in jail in connection with an article claiming that one of the leaders of the Islamist armed resistance, Abdelqader Chebouti, had been arrested. Authorities denied the report. In November, Benchicou received a suspended sentence for disseminating "false information."

Initially, the suspension of *El-Djezair el-Youm*, *Le Matin*, and *La Nation* in August 1992 appeared to violate Algerian law, insofar as the Information Code, in Article 99, gives the courts sole authority to suspend, temporarily or permanently, publications for infractions of the Code. Nothing in the February 1992 State of Emergency decree gave the executive branch the power to close publications. On August 15, after the three dailies had already been suspended by executive fiat for one week, a new presidential decree was announced, authorizing closures for periods of up to six months, within the framework of the State of Emergency. Decree 92-320, dated August 11, stated that:

Measures to suspend the activity or to close can be ordered against any entity, organ, establishment or enterprise, whatever its nature or function, when said activities endanger the public order, public security, the normal functioning of the institutions or the higher interests of the country.

Explaining the closure of the three dailies, an official communiqué stated:

The freedom of information and democratic pluralism can under no circumstances be used in order to manipulate information or to disinform in a way that harms public order, public security, the stability of institutions and the interests of Algeria....In the absence of a professional code of conduct, the rules that govern relations between press organs and the government revolve around one and only one exigency: the interests of Algeria before and above all else.⁵⁷

The closures of August 1992 began a new phase in the crackdown on the media. Until then, the authorities had suspended no publications during the six-month-old state of emergency other than the FIS organs that had been forced underground when the party was itself outlawed. Following the issuance of the new decree on August 15, several papers were suspended for varying periods, all in connection with

⁵⁶ Letter from the Embassy of Algeria in Washington to the New York-based Committee to Protect Journalists, August 1992.

⁵⁷ Agence France-Presse, August 15, 1992.

articles deemed objectionable by the authorities. These included the satirical weekly *Essah-Afa*, the Sétif-based weekly *Barid ech-Charg*, the daily *Liberté*, the French-language weekly *l'Observateur*, and the Arabic-language pro-Islamist *En-Nour*. *Essah Afa*, which was accused of having become a de facto mouthpiece of the FIS,⁵⁸ continues to be banned.

In addition to suspensions and arrests, the government has pressured the media through its control of public-sector enterprises. Public-sector enterprises account for at least seventy-five percent of all advertisements in Algerian newspapers. In May 1992, the government explicitly threatened to withdraw such advertising from newspapers that were "destabilizing" the state.⁵⁹ In October 1992, then-Prime Minister Belaïd Abdesslam, stung by criticism in *El-Watan*, ordered the public-sector advertising agency ANEP to pull its advertising from the daily. The advertisements returned several months later, however.

In late July 1993, the independent dailies *Le Matin*, *Liberté*, the governmental Arabic-language daily *Essalem*, and four independent magazines had to suspend operations because the state-run printer, the Société d'Impression d'Alger (SIA), refused to print their papers until they paid their debts. The printer claimed the journals had not paid past bills; but the journals charged that the fault lay with the public-sector distribution company they used, the Enterprise Nationale des Messageries de Presse (ENAMEP). ENAMEP had defaulted on a December 1992 agreement by which it would pay each publication's printing bills from sales proceeds. The journals charged that the impasse was another form of government pressure against the independent press. This seemed to be the case at least for *Le Matin* and *Liberté*, which, by the government's admission, operated without a deficit.⁶⁰

In September 1993, after the change of governments, *Le Matin* and *Liberté* were able to resume publishing. However, the other publications caught in the ENAMEP-SIA dispute did not reappear. At least in the case of the weekly *Ruptures*, the government was not entirely to blame. Of the two magazines' founders, one, Tahar Djaout, had been assassinated in May. The other, Abdelkrim Djaad, fearing for his life, fled to France, where he announced in November that it would not reappear.

Foreign correspondents have also come under growing pressure. Algiers-based foreign correspondents told Middle East Watch they believed that their phone lines are tapped, and that they exercise self-censorship in order to be permitted to continue working. In May 1992, George Marion, the Algiers-based correspondent of *Le Monde* since 1990, was expelled from the country after authorities refused, without providing a reason, to renew his work permit. The correspondent for Radio France Internationale, Anne Dissez, was forced to leave the country in January 1993, also when authorities refused, without explanation, to renew her permit. (Both *Le Monde* and RFI were subsequently permitted to station new correspondents in Algiers.)

Foreign-based journalists applying to enter Algeria often faced delays in obtaining visas, or simply

⁵⁸ See Article 19, "Algeria: Press Freedom under the State of Emergency," December 26, 1992.

⁵⁹ Interview with Ghania Mouffok, an editor at *Jeudi d'Algérie* (a now-defunct French-language weekly), Algiers, June 6, 1992.

⁶⁰ In November, Ministry of Communications officials told a visiting delegation from the French organization Reporters sans Frontières that the two dailies were profitable, according to RSF's Robert Menard.

received no reply to their applications. Among those who faced this obstacle during parts of 1993 were two of France's most prominent reporters on Algeria, Mireille Duteil of *Le Point* and José Garçon of *Libération*.

THE KILLING OF CIVILIANS BY ARMED OPPOSITION GROUPS

Violent acts by armed Islamist groups increased dramatically in Algeria during 1993, as did the efforts of the security forces to crush the resistance. Casualties resulting from the political violence more than doubled compared to 1992. The month of November was one of the bloodiest months to date, with over one hundred Islamists, at least twenty-five security force members and twenty-five civilians reported killed, according to tallies of official reports.⁶¹

Tallies of official reports on the violence now put the two-year death toll at close to 2,000. According to a November 10 count by the Agence France-Presse, based on official reports, a total of 324 civilians, 1,017 Islamists, and 427 members of the security forces had been killed in political violence since parliamentary elections were canceled on January 12, 1992.

Many of the casualties occurred in gun battles between the security forces and well-armed Islamist groups. But, increasingly during 1993, the violence involved abduction-killings and ambushes of civilians, who came from all walks of life, and included prominent writers, professors, public figures and foreigners working or living in Algeria.⁶² Both civilians and security force members have been found dead after having been abducted and killed while in custody.

While there is little doubt that Islamist groups were responsible for some of the political violence, many Algerians, including those harboring no sympathy for the Islamist cause, suspect that there were other forces carrying out some of the killings, using the climate of violence and mayhem as a cover to settle political and personal scores, to eliminate suspected Islamists within the security forces, or to protect financial interests. For example, many Algerians believe that the persons behind the assassination of HCE President Mohamed Boudiaf in June 1992 were not Islamists, as the authorities claimed, but rather foes of Boudiaf from within the ruling circles who opposed his efforts at economic reform and his drive against corruption.⁶³

Middle East Watch condemns the mistreatment or killing of all persons in custody, as well as the targeted assassination of civilians, whether by government forces or by armed opposition groups. We believe that human rights abuses by one party, no matter how egregious, never justify violations

⁶¹ Many observers believe the actual numbers to be far higher than what is officially reported. However, there is no independent source of cumulative information on the political violence. The only regularly updated sources of data on casualties are official or semi-official, such as the Algérie Presse Service or the National Monitoring Body for Human Rights (*Observatoire national des droits de l'Homme*, or ONDH). The criteria used by these sources to classify victims as "Islamists" or "civilians" are not known.

⁶² An organization calling itself the Islamic Armed Group threatened, in a statement released in early November, to begin killing foreigners who remained in Algeria after November 30.

⁶³ The accused assassin of Boudiaf confessed, the regime reported, to having acted alone and out of religious convictions. However, an official inquiry completed in December 1992 concluded that the suspect could not have acted alone, although it reached no conclusions as to who had ordered the shooting. The suspected gunman has been detained without trial since the day of the killing eighteen months ago.

committed by another party.

Our opposition to violence against civilians extends to attacks on suspected informants and government employees not directing or taking direct part in security force operations involving the use of force. At all times, we are guided by our opposition to the death penalty, with or without due process, and by the conviction that the right to life is paramount.

Our position is guided also by principles of humanitarian law. The customary laws of international armed conflict require all parties to take all feasible precautions to avoid civilian casualties, and prohibit killing or ill-treating any person who is in custody. These principles also underpin Common Article 3 of the Geneva Conventions of 1949, which is binding upon *all parties* to a non-international armed conflict occurring in the territory of one of the High Contracting Parties.⁶⁴ (Algeria is a signatory to the Conventions.)

Middle East Watch would apply, by way of analogy, the same principles if Common Article 3 were deemed inapplicable on the grounds that the violence in Algeria does not rise to the level of "armed conflict," but is more akin to internal strife. While it is not a legally binding covenant, the Declaration of Minimum Humanitarian Standards, a U.N. working document on situations of internal strife,⁶⁵ affirms the prohibition of violence against civilians. Article 5 states, "The use of force directed against persons not taking part in acts of violence shall be prohibited in all circumstances." Article 2 states that the minimum standards must be respected by "all persons, groups and authorities, irrespective of their legal status."

In the absence of claims of responsibility for most acts of violence not committed by uniformed or

⁶⁴ Common Article 3 states in relevant part:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely...

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

⁶⁵ U.N. document E/CN.4/1984/4, adopted by an expert meeting convened by the Institute for Human Rights, Abo Akademi University, Turku/Abo, Finland, 1990.

identifiable security forces, and the obstacles to investigating the killings, the authorship of specific acts was often difficult to attribute. The FIS, for one, did not claim responsibility for any assassination⁶⁶ and, in response to some killings, explicitly denied responsibility.⁶⁷

One member of the FIS executive authority in exile, Kamreddine Kherbane, recently insisted to a reporter that the FIS and its followers targeted only members of the security forces. The killing of intellectuals and foreigners, he said "could only be the doing of Military Security" or "personal vendettas." Kherbane denied that groups supportive of the FIS but not under its control could be responsible. "We have recently united the [armed] groups within the 'Islamic Salvation Army,' whose leaders are Saïd Mekhloufi, Merzoug Bara, and Abdelkader Chebouti." He questioned the existence of the "Islamic Armed Group (*Groupe islamique armé* or GIA), which had claimed responsibility for the kidnapping of three French consular officials, saying that if the GIA "really existed, it was used. We are examining at what level it was infiltrated by the police."⁶⁸

Despite Kherbane's claims, it was clear that armed Islamist groups were responsible for many of the killings of both civilians and security force members that had been attributed to them by the authorities. It is not possible confidently to attribute responsibility on the basis of official press reports or of convictions in the Special Courts; as shown above, press reporting on security incidents is not free, and the facts supposedly established in Special Court trials are susceptible to doubt on the grounds that the trials violate standards of fairness and impartiality. However, the case for Islamist responsibility comes from other evidence, such as the numerous calls for punishing or killing civilians who collaborate with the regime that were reportedly signed by leaders of the Islamist underground inside Algeria, and statements by FIS spokesmen abroad attempting to justify some of the killings.

Prominent FIS figures speaking on behalf of the party endorsed armed resistance more clearly and openly in 1993 than in the past. In light of these statements, and in light of the spread of violence against civilians and killing of persons in custody by opposition groups, Middle East Watch deplores the fact that FIS spokesmen have sought to justify the killings of some civilians, and, to our knowledge, have made no statements clearly condemning the targeting of civilians.

Middle East Watch believes that it is morally incumbent on the FIS to condemn and urge a halt to attacks on civilians and in-custody killings, despite the fact that the FIS has been banned, its chief and deputy chief are in prison and unable to communicate with the outside world,⁶⁹ and other party leaders are either in prison, underground, or in exile. Middle East Watch is aware that spokesmen for the FIS in exile

⁶⁶ One prominent FIS representative in exile, Anouar Haddam, drew a distinction in an October 18, 1993 interview with the Agence France-Presse, between the [armed] mujahidin and the FIS as "a political party that does not claim responsibility for any action."

⁶⁷ For example, the FIS spokesmen publicly denied responsibility for the August 1992 airport bombing that killed nine persons, and for the assassination in August 1993 of former prime minister Kasdi Merbah.

⁶⁸ Gilles Millet, "Le FIS plaide sa cause à Khartoum," *Libération*, December 7, 1993.

⁶⁹ The FIS chief, Abbasi Madani, and deputy chief, Ali Belhadj, are serving twelve-year prison sentences on charges stemming from a strike and major disturbances in May and June 1991 (see above, Historical Background section).

may not be speaking authoritatively on behalf of the outlawed party, and that the relationship between the FIS and the groups perpetrating the violence remains nebulous.⁷⁰ Some militant groups, such as the Islamic Armed Group, reportedly claim to act independently of the FIS and have even denounced and threatened FIS leaders in exile.⁷¹

Yet, because the FIS apparently remains a prominent voice of the Islamist movement in Algeria, and continues to lay claim to political power on the basis of its strong showing in the December 1991 round of elections, the party has an obligation to promote respect for humanitarian principles, whether or not there is a clear chain of command linking the FIS to those perpetrating the violence. Persons speaking on behalf of the party should publicly condemn and oppose all acts of violence directed at civilians and persons who are in custody.

The victims of the violence have included government officials and employees, ordinary Algerians, such as farmers, taxi drivers and shopkeepers, and members of the country's intelligentsia. The assassinated government employees came from all levels of service. They included Hafid Senhadri,

⁷⁰ Asked to explain the relationship between the FIS and those groups taking armed action in Algeria, Rabah Kebir, head of the FIS executive authority in exile, told Middle East Watch in a November 8, 1993 phone interview in Arabic from Germany:

Among those who responded to state violence there were undoubtedly members of the FIS ... [But] the organizations and groups [that] came into being to defend the will of the people and to resist the violence of the state ... cannot be said in fact to be the FIS ... They can be said to have branched off from the FIS ... According to our information, these groups have members at the highest level of responsibility who have the proper experience and legal expertise, who ... determine whether any act of violence is justified from an Islamic legal point of view or from a political point of view. And these are the ones who decide which acts will be carried out. But for us as political leaders, we express our own views and convictions through media or international organizations, and those views are transmitted to people inside...

I believe that to a certain extent we have an ability [to influence the armed resistance] but it's contingent on the ability to communicate, which is very difficult right now. But there is a considerable amount of influence because in the resistance are people who were once in the FIS.

Kebir, an interview with Radio France Internationale broadcast on October 22, warned that his influence over the *mujahidin* was limited. Asked if the violence would cease if he so ordered, Kebir replied:

I think that is not so easy. There are *mujahidin* groups, each group has its emir, its leader. These leaders are mature people, I think, they are up to the task. If there are specific developments, if there is a real return to popular choice, then I think that people will accept this. (As reported in Summary of World Broadcasts, October 25, 1993.)

⁷¹ In a communiqué transmitted on November 20 to the Agence France-Presse, the Islamic Armed Group threatened Anouar Haddam, Rabah Kebir, as well as the leaders of the Islamic Armed Movement in Algeria. The communiqué stated that the Islamic Armed Group "did not represent the armed wing of the FIS," but, rather, was an "independent group." Agence France-Presse, November 20, 1993.

secretary general of the Ministry of Vocational Education, who died on March 18, 1993 from gunshot wounds received four days earlier, as well as several prosecutors, judges,⁷² and court clerks. Several government-appointed imams (preachers) were also killed.⁷³

Local officials have accounted for the largest number of civil servants killed. The victims are, for the most part, persons whom the HCE has appointed since 1992 to replace ousted FIS-affiliated mayors and councilmembers who had been elected in 1990. During 1992 and the first half of 1993, at least twenty of these appointees to local offices were assassinated, according to an Agence France-Presse report of July 7; several more have been killed since that time. These appointees had been condemned in an underground FIS communiqué, dated April 19, 1992 and signed by party spokesman-in-hiding Abderrazak Redjam, for "participating in a plot against the people by taking the place of their elected representatives." Death threats were reportedly made against some of these appointees before they were killed.

Speaking of these killings, Rabah Kebir, head of the FIS executive authority in exile, told Middle East Watch on November 8, 1993:

[The appointees] were directly notified after they replaced the fired elected people that they should resign from the government because their action was usurpation. Even so, there was no random application of the execution orders against them. Always, the matter was decided after a local study was conducted, and it was determined whether [the appointee] was in fact working to strike at people, that is, by informing the police, or facilitating the work of the security forces in killing people. If he did these things, then he became a target. But if he worked only in administrative matters, no. Because a decision had been made on the national level to dissolve all municipalities, the affairs of the people had to be attended to. The [appointees] who performed these functions encountered no problems [from the Islamist resistance].

Middle East Watch does not possess the information to determine the accuracy of Kebir's claims about the targeting of local officials. However, we reiterate our opposition, as a violation of humanitarian principles, to acts of violence directed at civilians, including government officials, who are not *directing* or *taking direct part* in security force operations involving the use of force.

Between March and November 1993, some twenty members of the intelligentsia were murdered, and several others were wounded, in attacks attributed by the government to the Islamists. Most of the attacks were committed at or near the victim's home or workplace, by assailants wielding guns or knives. Those killed included seven journalists (see section above on the press), former minister of higher education Djilali Liabes (March 16), physician and writer Laadi Flici (March 17), professor of psychiatry Mahfoud Boucebci (June 15), sociologist Mohamed Boukhobsa (June 22), professor of law Hambli Ahmed (October 2) and Djilali Belkhenchir (October 10), a physician and human rights activist. The latter was a leading member of the Algerian Committee Against Torture and of a national children's rights association.

⁷² The Associated Press reported on December 6, 1993 that four magistrates had been killed during the previous seven months.

⁷³ Following the dissolution of the FIS in 1992, the government asserted control over many mosques that it considered to be FIS strongholds. It closed some and replaced the imams in others.

When killed, Boukhobza was director of the National Institute for Global and Strategic Studies, a government-supported think tank. He had been named to the post to replace Djilali Liabes, who had been murdered in March.

Three of the fatalities, Senhadri, Flici, and Boukhobza, were members of the National Consultative Council (*Conseil Consultatif National*, or CCN), a sixty-member advisory body created by the HCE early in 1992 as a substitute for the National Assembly that had been prevented from taking office. Underground Islamist publications denounced the CCN as a "usurpationist" body soon after its creation. Two other members of the CCN survived assassination attempts: lawyer Mohammed Ferhat, on July 10, and Merzak Bagtache, on July 31, 1993. These attacks occurred despite the fact that the CCN has met only infrequently since its creation and has played no meaningful role in national life.

Rabah Kebir has justified the targeting of CCN members:

We issued a statement shortly after the coup that this Council was illegitimate. It was formed on the ruins of the elected National Assembly, in usurpation of the will of the people, as expressed in the national elections, and they were therefore targeted. They usurped authority that they had no right to usurp ... We asked these people to resign from their positions. And if they did not resign, people would deal with them and probably liquidate them ... Whoever usurps legitimate authority, whether a president or anyone else – Islamic law orders us to kill the usurper, so that peace will be maintained ... Especially since these persons were warned by the *mujahidin*, those who persisted are definitely considered foes of the people and usurpers of legitimate authority.⁷⁴

In communiqués, the FIS has vowed to combat not only the regime but also "their secularist-communist allies."⁷⁵ This phrase may be an allusion to members of Algeria's communist party, known formerly as the Parti de l'Avant-Garde Socialiste (PAGS) and reborn in 1993 as the Ettahadi party. Certainly, members of this relatively small political group seem to have been targeted. In January 1992, the PAGS loudly demanded the cancellation of the elections. PAGS/Ettahadi militants are, for the most part, avowedly secularist in their politics, and have urged the HCE to exclude the FIS from the political process.

Abderrahmane Belazhar, a unionist and former PAGS militant, was among the first prominent civilian victims of the political violence in Algeria. He was gunned down in Constantine on September 9, 1992. Hachemi Cherif, the chief of the Ettahadi party, escaped an assassination attempt in April 1993. Agricultural engineer Sahab Mohand Oubelaïd and his wife Rachida were killed on July 7; Mohand had been a member of the PAGS political bureau in the early 1990s.⁷⁶ Abderrahmane Chergou, a former head of the PAGS, was assassinated on September 28. Guenzet Rabah, an Ettahadi leader and high school philosophy teacher, was killed on October 5.

⁷⁴ November 8, 1993 phone interview with Middle East Watch.

⁷⁵ See, for example, communiqué number 7, FIS National Provisional Executive Bureau (Europe), August 25, 1993. In a later interview, however, Rabah Kebir denied that the FIS justified attacks on any civilians because of their political views (see text below).

⁷⁶ For an investigation that raises more questions than it answers about who was behind the killing of the Mohands, see "La vendetta de Beni-Khelil," *Horizons*, July 11, 1993.

Attacks on communist militants, like nearly all of the attacks on civilians, have gone unclaimed, and the motives in many cases remain murky. Only a portion of Algeria's civilian victims were in some fashion associated with the regime or with state institutions, or had taken outspoken positions against the country's Islamist movement.

FIS spokesmen have repeatedly praised the armed struggle against the regime. In January 1993, a statement signed by imprisoned deputy party chief Ali Belhadj was smuggled out and disseminated widely in mosques around Algeria. In the undated document, Belhadj called on Algerians to resist the regime, saying:

If I were outside the walls of prison, I would join the ranks of my brothers who fight to rid the people of this brazen junta ... I swear to you, O Algerians, if I were free I would enlist as a footsoldier under the command of brother *mujahid* Abdelkader Chebouti⁷⁷ ... or of any other faithful man who fights this regime, which refuses all peaceful political solutions, and defies the Revelation and international conventions. Whoever conducts himself in this fashion must be chased and defeated until the Algerian Muslim people obtain their right to freely choose their rulers.⁷⁸

FIS spokesmen have, throughout the year, echoed this call to arms against the regime without taking pains to urge that civilians be spared in the struggle. At a time when civilians were being assassinated by armed groups on an almost-daily basis, FIS spokesmen publicly justified some of the killings and at the very least demonstrably failed to condemn such acts or disassociate the party from them.

Perhaps the clearest support among FIS leaders in exile for the killing of civilians came from Anouar Haddam, who won a seat in parliament in the December 1991 elections and fled shortly afterward into exile. Haddam has been among the most visible FIS spokesmen in the West. In September 1993 he was named as one of the four known members of the newly formed FIS Executive Authority in exile, whose self-declared purpose is "to unify all of the forces and resources of the FIS."⁷⁹ Haddam's appointment to this committee, which is headed by Rabah Kebir, suggests that his views are within the mainstream of thought in the party.

On June 17, 1993, Haddam was quoted by the Agence France-Presse in Rome as calling the fatal stabbing two days earlier of psychiatry professor Mahfoud Boucebci in suburban Algiers "a sentence and not a crime. It is a sentence carried out by the *mujahidin*." Asked for comment by Middle East Watch in a

⁷⁷ Chebouti is a commander of the Armed Islamist Movement (MIA) whose evasion of capture has earned him near-legendary status among his admirers.

⁷⁸ Belhadj's authorship of the statement was confirmed by Rabah Kebir in a phone conversation with Middle East Watch on February 14, 1993. At least two of Belhadj's lawyers were questioned by the authorities in connection with the diffusion of the statement, and one, Brahim Taouti, was arrested and sentenced by a military court to a three-year prison term for "diffusing subversive tracts." On Taouti's imprisonment, see the press release issued jointly by Middle East Watch and the Lawyers Committee for Human Rights, May 11, 1993.

⁷⁹ Agence France-Presse, September 18, 1993.

meeting in Washington on September 23, Haddam charged that Boucebci had been targeted for having advised the security forces on methods of extracting confessions through torture. Haddam stated that the FIS could substantiate this accusation, but declined to make evidence available.

Commenting on the killing of Algerian intellectuals more generally, Haddam was quoted on October 18, 1993 by the Agence France-Presse in Paris as asking, "Who are these so-called intellectuals? Among them are members of the National Consultative Council, which has usurped the place of the people's elected representatives, persons who wrote murderous editorials *l'éditorial assassins*, and those who, through psychiatry, advised torturers on how to obtain confessions." Haddam stated, "[T]he Algerian people have chosen as targets only those individuals upon whom the military-security system in Algeria relies. We know them one by one, and they are not innocent people."

In response to the first kidnappings and killings of foreigners in Algeria by armed opposition groups, Kebir told Radio France Internationale (RFI) in an interview broadcast October 22, 1993, "It is not the policy of the FIS to kill foreigners, but it is very very difficult to control actions by the mass of the people."⁸⁰ Three weeks later, a FIS communiqué purportedly signed by Abderrezak Redjam, a prominent FIS figure in hiding inside Algeria, implicitly justified attacks on foreigners, saying, "Those who cooperate with a regime that has no objective other than to remain in power will be considered accomplices in the crime against the Algerian people."⁸¹

In the RFI interview, Kebir was asked about the assassination of intellectuals. Instead of condemning the phenomenon, he sought to justify it or place it in context:

After the elections of 26th December, many so-called intellectuals asked the military regime to intervene against the people, to repress the people. Normally an intellectual must side with the people...I do not believe the FIS has a strategy of killing people. From the beginning, the FIS adopted the strategy of letting the people, all the people, choose their leaders freely. The regime, however, declared war on the people ... So a distinction must be made between the FIS's policy, and what is going on in Algeria. What is going on in Algeria is absolutely out of control.

Kebir claimed in the November 8 phone interview with Middle East Watch that the FIS viewed civilians as justifiable targets only when they actively collaborated with the regime:

For us, civilians are not targets. It is not correct to target civilians. But ... there are those who collaborate with the regime, and they inform on our brothers. Those were targeted by the *mujahidin*. [They] may not participate directly in the murders or killings, but they are equally responsible.

The FIS does not target persons because of their education or their tendencies, as long as they are not involved in the killing of the people, or informing the police or the gendarmes to enable them to kill the people. They are never targeted because of their ideas....

⁸⁰ As reported in the Summary of World Broadcasts, October 25, 1993.

⁸¹ Catherine Simon, "Les islamistes durcissent le ton contre les étrangers," *Le Monde*, November 17, 1993.

As long as a journalist's opposition to the Islamist's program is merely intellectual, and his criticism is along these lines, there is no problem ... But some journalists have been used to inform on our young men. If a journalist is associated with the process of informing [the authorities], he ceases to become a journalist and becomes, in effect, a combattant.

The killing of persons suspected of collaborating with the regime, Kebir claimed, is carried out only after careful examination of the case:

All of the jihad groups that exist in the country have committees composed of Islamic legal scholars and people who are also politically knowledgeable. Before a decision is carried out, they present their opinions. I'm not referring to clashes, where the gendarmes confront the *mujahidin*. I'm talking about the liquidation of respectable personalities. It's done as follows: a report is presented about whether such a person is in fact involved in torture or other offenses ... A person suspected of collaboration is warned personally that if he does not heed the warning, and the preponderance of the evidence against him is such, then a decision is made by these committees, based on Islamic legal safeguards, that this person may be liquidated, as long as the evidence is satisfactory ... We can say that these [procedures] are really akin to courts.

Kebir claimed to Middle East Watch that any killing of a civilian that occurred in violation of these principles is "the responsibility of other people and was not condoned by the FIS."

Middle East Watch has no specific information by which to judge the activities of civilians who have been assassinated or the legal safeguards they may have enjoyed prior to being executed. However, we strongly suspect that the above-described procedures for investigating and warning informants, even if and when they are followed by armed groups, fall far short of guaranteeing suspected informants an opportunity to defend themselves before a fair and impartial tribunal, before being subjected to the drastic punishment of execution.

Middle East Watch reiterates that human rights violations by one party to a conflict can never be invoked to justify abuses by another party. We unequivocally oppose the targeting of civilians, including those suspected of providing information to the security forces.⁸²

Whether or not the FIS is directly responsible for the assassination of civilians, it has become complicit in these deplorable actions by justifying them under certain circumstances and by failing to condemn them unequivocally. As a leading voice of the Islamist opposition in Algeria, and a claimant to political power, the FIS has a duty to use all means at its disposal to work to end the deliberate killing of civilians.

⁸² Common Article 3 of the Geneva Conventions of 1949 prohibits all parties to an internal armed conflict from executing person "without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples." Guidance as to the requisite judicial guarantees can be found in Article 14 of the International Covenant on Civil and Political Rights and in Article 75(4) of Protocol I to the Geneva Convention.

THE U.S., FRANCE, AND THE EUROPEAN UNION: THE NEED FOR A HUMAN RIGHTS POLICY TOWARD ALGERIA

The U.S., the European Union, and individual European governments can press for improvements in the dismal human rights record of the Government of Algeria by attaching human rights conditions to future loans and credits. Regrettably, all of Algeria's main trading partners and creditors in the West have been virtually silent toward the government's violation of human rights, and have failed to use their leverage as creditors and allies to promote respect for human rights.

In urging donor nations and the European Union to adopt a more active role in promoting human rights in Algeria, Middle East Watch believes that they should at this time press, in particular, for the discontinuation of trials before Special Courts and a halt in the execution of persons convicted in Special Courts or in other tribunals that violate international fair-trial standards. They should demand that individuals already convicted and sentenced by the Special Courts be released or retried in courts that meet international standards for a fair trial.

At present, the government of Algeria is desperate to maintain the flow of loans and investments from abroad. Senior officials have repeatedly visited capitals in the West and the Gulf countries to plead for aid, understanding, and forgiveness of Algeria's public debt,⁸³ arguing that the political crisis cannot be solved without reinvigorating the economy.

Algeria has in recent years enjoyed relatively easy access to credit because of its substantial reserves of oil and natural gas. It is a major provider of natural gas to Western Europe. These resources keep Algeria's foreign debt of about \$26 billion relatively manageable by Third World standards.

However, Algeria is currently being squeezed by a high proportion of short-term loans that fall due in the next couple of years; it had to make about \$9 billion in payments during 1993. Algeria's external debt ratio (the ratio of debt servicing to export earnings) during 1993 was reportedly eighty-three percent,⁸⁴ among the world's highest. In order to spread the burden over a longer period of time and thereby increase available funds for domestic spending, the government is seeking new loans and balance-of-payment assistance.

France is by far Algeria's largest creditor, with roughly \$6 billion in outstanding loans. Italy, the largest purchaser of Algerian natural gas in Europe, is its second largest creditor. Spain and Japan are among the other countries that are owed sizable amounts.

The loan-granting decisions of the International Monetary Fund (IMF) heavily influence the policies of major creditors and international financial institutions toward Algeria. Negotiations between the IMF and the Government of Algeria resumed in late 1993 over the economic reforms that the IMF insists upon as

⁸³ During a visit to Brussels in October, Foreign Minister Mohamed Saleh Dembri lobbied officials of the European Union for debt forgiveness, according to an Agence France-Presse report of October 13, 1993.

⁸⁴ Francis Ghiles, "IMF and Algeria to Resume Debt Talks," *Financial Times*, November 27-28, 1993.

a precondition to approving loans. Prime Minister Redha Malek is viewed as far more interested than his predecessor, Belaid Abdesslam, in reaching an agreement with the IMF that would enable Algeria to reduce the percentage of export earnings that go toward debt servicing. On November 30, Malek met with IMF officials who were in Algiers on a two-week visit.

THE U.S. AND ALGERIA

Most of the U.S. public assistance extended to Algeria is to be found in two programs: credits for the purchase of U.S. farm products via the Department of Agriculture's Commodity Credit Corporation (CCC); and loan guarantees provided by the Export-Import Bank (Eximbank) to U.S. corporations with projects in Algeria.

Until 1993, Algeria had been either the third or fourth largest client of the CCC. In fiscal year 1994, which began on October 1, 1993, Algeria is expected to move to the second position, with an allocation of \$550 million in credits.

For the Eximbank, Algeria ranked fourth, as of September 30, in terms of the bank's financial exposure, following Mexico, Venezuela and Brazil. The bank has an exposure of \$2.2 billion in Algeria, mostly in the form of guarantees of medium- and long-term loans by private banks.

The CCC, Eximbank, and the other U.S. government agencies that grant loans, credits and loan guarantees to foreign governments have traditionally ignored or downplayed human rights criteria in their decision-making. While statutory human rights restrictions on activities of the Eximbank are quite weak,⁸⁵ they are more stringent for the CCC. The latter is required to follow those provisions of the U.S. Foreign Assistance Act of 1961, as amended, which forbid the furnishing of assistance to the government of any country

which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction and clandestine detention of those persons, or other flagrant denial of the right to life, liberty and the security of person, unless such assistance will directly benefit the needy people in such country.⁸⁶

Middle East Watch urges the Clinton administration publicly to inform Algiers of its intention to link future CCC and Eximbank programs to the government's achievement of tangible progress toward

⁸⁵ "Only in cases where the President determines that such action would be in the national interest where such action would clearly and importantly advance United States policy in such areas as international terrorism, nuclear proliferation, environmental protection and human rights, should the Export-Import Bank deny applications for credit for nonfinancial or noncommercial considerations." Export-Import Bank Act of 1945 § 2(b)(1)(B), 12 U.S.C. § 635(b)(1)(B) (1988).

⁸⁶ Section 116 (22 USC 2151n). The relevant legislation for the CCC is the Agricultural Trade Development and Assistance Act of 1954, as amended (Public Law 480), Section 112 (7 USC 1712).

resuming the democratic process and toward curbing human rights abuses.

The U.S. government's only annual grant to Algeria is a modest \$150,000 program to enable participation in the International Military Education and Training (IMET) program. Algerian participation is restricted by the State Department to programs that are "primarily designed to enhance democratization and respect for human rights in both the civilian and military sectors."⁸⁷

These assurances notwithstanding, Middle East Watch believes that the program should be suspended, given the heavy involvement of the security forces in grave human rights abuses, including torture, if Algiers makes no progress in the coming months toward respecting human rights and resuming the democratic process. This is what the Senate's Foreign Relations Committee, in its official report accompanying the Foreign Assistance Act for the fiscal year 1994 budget, urged the Administration to consider doing.⁸⁸

The U.S. also has a means to promote human rights through its vote at the World Bank. The Bank's Algeria portfolio is one of the largest in the Middle East and North Africa, with an outstanding balance of roughly \$1 billion on project loans. The Bank also approved an adjustment loan of about \$350 million in 1991 and released part of the total at that time. The second tranche of the loan is conditioned on the Government of Algeria presenting a macroeconomic plan deemed satisfactory to the World Bank.

Under Section 701(a) of the International Financial Institutions Act of 1977, the U.S. is obligated to use "its voice and vote" at the World Bank and the International Monetary Fund to channel assistance to governments other than those engaging in a patterns of "gross violations of internationally recognized human rights." The U.S. should fully abide by this law in its actions on pending World Bank project loans to Algeria, except those that meet basic human needs.

⁸⁷ Statement by then-Assistant Secretary of State for Near East Affairs Edward P. Djerejian, before the Subcommittee on Africa of the House Foreign Affairs Committee, May 12, 1993. U.S. Department of State Dispatch, May 24, 1993, Vol. 4, No. 21.

⁸⁸ The Committee's report states, with regard to Algeria:

The Committee recognizes the threats posed by the spread of Islamic extremism in North Africa. By the same token, the Committee believes the cancellation of democratic elections, the installation of a *de facto* military junta, and the deteriorating human rights conditions in Algeria have undermined stability and have hurt U.S. efforts to encourage democracy and respect for human rights in the region.

The Committee therefore urges the Administration to make a greater effort to impress upon Algeria the importance of serious economic reform, the initiation of a national dialogue incorporating the full spectrum of Algerian society, and the quick resumption of the democratic process. Should there be no progress by the end of the year in each of these areas, the Committee urges the Administration to consider halting the provision of International Military Education and Training to Algeria.

(Committee on Foreign Relations, Report accompanying S. 1467, September 16, 1993, report 103-144.)

To its credit, the Clinton administration has shown some willingness to criticize the Algiers regime for failing to offer any response to its genuine security problem other than heightened repression. The Clinton administration's first major policy statement on Algeria contained blunt language on human rights. In testimony prepared for a May 12, 1993 hearing of the House Foreign Affairs Committee, then-Assistant Secretary of State for Near Eastern Affairs Edward P. Djerejian said:

Since the suspension of parliamentary elections, little progress has been made in restoring the democratic process and correcting the disturbing deterioration in the human rights situation...Frankly, so far we have seen little in the way of action or specificity as to how the government plans to implement real political and economic reform...[W]e do not believe that Algeria's problems can be resolved mainly through resort to security methods...In our contacts with the Algerian Government, we urge a measured approach to security, one which focuses on those guilty of violence but avoids wide-scale repression or renewed incommunicado detention...

The U.S. strongly supports freedom of the press and is thus concerned about the restrictions placed on the press and the pressure which has been brought to bear against individual journalists. Such actions undermine the democratic process and inhibit political dialogue. We also are disturbed by reports from independent human rights organizations alleging the widespread use of torture, and we urge the Algerian Government to allow a full-scale investigation into these allegations.

Since Djerejian's appearance before the House Committee, senior U.S. officials have made no further public comments about human rights in Algeria.

FRANCE AND ALGERIA

France has closer ties to Algeria than any other country in the West, and remains by far its largest creditor, with roughly \$6 billion in outstanding loans. In 1993, France provided slightly more than \$1 billion in new credit, most of it balance-of-payments assistance on favorable terms and commodity credits guaranteed by COFACE, the state export credit agency.

The conservative government headed by Prime Minister Edouard Balladur, installed in March, fortified French support for the Algiers regime. Other than condemnations of political violence by opposition groups and cautious statements in favor of an expanded political dialogue, the Balladur government has been publicly silent on Algeria's worsening human rights practices.

This policy followed the course taken, after some wavering, by President François Mitterand and the ousted Socialist government. In early 1993, before the French elections, senior French and Algerian officials conducted high-profile trips to each others' capitals and signed agreements for new French assistance. Then-Foreign Minister Roland Dumas termed as "courageous" Algiers' "policies of restoring the authority of the state and economic reform." President Mitterand, who had infuriated Algiers back in January 1992 by criticizing the interruption of the electoral process, changed directions and issued a one-sided statement condemning "extremism."

In June, Foreign Minister Alain Juppé offered "help in the struggle of the Algerian government

against terrorism and religious fanaticism" without expressing any reservations about how the battle was being conducted. That month, Paris obliged Algerian authorities by forcing a number of Algerian Islamists to leave the country and banning *Le Critère*, a pro-FIS magazine published in France, and its successor magazine, *Résistance*.⁸⁹

In November, French authorities rounded up some ninety Algerians living in France, saying that they were suspected of links to the Islamist underground in Algeria. The operation was conducted two months after two French nationals had been slain in Algeria in an operation attributed to Islamists, and one week after three French consular officials in Algeria had been freed by kidnappers, who had given them a message warning all foreigners to leave Algeria or risk "sudden death." The Islamic Armed Group claimed responsibility for the kidnapping. Within a month after the round-up, France had released all but one of the Algerians arrested.

Minister of Interior Charles Pasqua made clear that the objective of the operation was at least partially political. On November 9, the day of the arrests, he warned Algerians in France "who identify with the FIS" that "They must not carry out on our soil political activity that runs against the interests of the French government."⁹⁰ Some observers saw the operation as a gesture of support toward the Algerian government in its battle against the Islamist resistance. Asked whether this was the case in an interview published by *Le Monde* on November 17, Pasqua replied, "It is possible, but that was not the objective." The interviewer then asked Pasqua:

Isn't the decision to support without reservations the power in place in Algeria debatable in that, in its response to the Islamists, that government does not appear to be respecting human rights?

Pasqua said:

There is no support "without reservations," as you put it. But what seems equally "debatable" to me is the fate of people, notably intellectuals, who in Algeria are assassinated by terrorists. I would like to see good people exert themselves a bit more on this subject...

Our policy, however, is clear. France has an interest in seeing, on the other side of the Mediterranean, countries that take care of their economic development and are stable. This, unfortunately, is not the case in Algeria...We can only hope that the democratic

⁸⁹ The Minister of Interior is empowered to order the ban of any book or periodical "of foreign origin" – a term that the Minister can apply even to material published in France by French citizens. The Official Journal justified the ban of *Résistance* on the grounds that it "might endanger the public order because of its violently anti-Western and anti-French tone." The publication quickly resurfaced under the name of *L'Étendard*, only to be banned again in the fall.

The banning by the French government of Algerian opposition publications is nothing new. Between 1986 and 1988, the French government banned seven times the organ of an Algerian opposition movement close to former Algerian president Ahmed Ben Bella, on the grounds that it "undermined the diplomatic interests of France." See Eric Goldstein, "The Magazine That Wouldn't Die," *Columbia Journalism Review*, July-August 1989.

⁹⁰ Agence France-Presse, November 9, 1993.

process will resume. But this, the government cannot achieve by itself.

Consistent with statements by French officials on Algeria, Pasqua was blunt in condemning terrorism while ignoring the issue of the brutal repression of Islamists by the government.

French support for the Algiers regime has been driven in large part by a concern that an Islamist takeover would swell the flow of immigrants to France, where one million Algerians already live, and that such a takeover would destabilize the rest of North Africa. Franco-Algerian relations are complicated, moreover, by the legacy of France's colonial rule in Algeria and its eight-year war to prevent the country's independence. Public evocation of human rights concerns by France prompts a backlash in Algerian official circles, complete with evocations of atrocities from the colonial era.

These considerations, however, are no excuse for Paris's one-sided policy. While properly condemning the threats and violence carried out by armed groups in Algeria, the French government has been utterly unwilling to criticize publicly the grave abuses committed by the government: the executions after unfair trials, the mass detentions without charge, and the other serious violations that continue to the present day.

THE EUROPEAN UNION AND ALGERIA

The European Union's (EU) role in Algeria is financially more modest than France's, but remains significant. It also carries with it the prestige of the Union's twelve constituent countries acting in concert.

The EU's Fourth Financial Protocol with Middle Eastern and North African governments, which came into force in May 1992, included a five-year aid package for Algeria worth 400 million Ecus (U.S. \$452 million). Most of the total is in the form of loans; a small portion consists of grants.

The financial protocols contained no provisions concerning respect for human rights. However, a resolution adopted by the European Parliament on January 15, 1992 — three days after the Algerian regime canceled the parliamentary elections — urged the European Commission, when it implements the cooperation agreements, to see that the signatory states respect human rights and international agreements, and in particular the Universal Declaration of Human Rights of the United Nations and the Geneva Conventions." Regarding Algeria, the resolution urged deferral of the application of the Fourth Protocol "until the political situation in that country has clarified."⁹¹

The European Parliament promptly blocked Fourth Protocol aid to Morocco and Syria on human rights grounds, although it released all of the aid to Morocco and part of the aid to Syria later in 1992. The Parliament did not block the aid to Algeria. The first tranche was released in the spring of 1992. However, disbursement of the second tranche, worth 150 million Ecus, has been stalled on financial grounds, pending Algeria's agreement to the kind of economic adjustment strategies sought by the IMF.

⁹¹ On July 11, 1991, in anticipation of parliamentary elections in Algeria, a European Parliament resolution urged Algiers "to pursue a bold policy of openness and freedom of expression by allowing foreign journalists to have free access to information and, in the face of destabilization attempts, not to interrupt its democratization measures nor to allow the introduction of an authoritarian political order based on violation of human rights."

In recent months, the European Parliament has showed a laudable willingness to criticize both the government and its adversaries. A non-legislative resolution of September 17 condemned "the continuing assassinations of intellectuals, journalists, administration officials and others," while also noting the "thousands of arrests and internments in detention camps, the practice of torture and the resort to the death penalty." The resolution stated that "a policy of repression, which inevitably entails human rights violations, cannot serve the objective of democratization in Algeria." It urged the European Union's Council of Ministers to work to promote human rights when negotiating cooperation agreements with Algeria.

More recently, the European Parliament raised the possibility of forgiving or renegotiating the terms of Algeria's debt to the European Union. This option was endorsed in a non-legislative resolution, adopted on October 28, that focused largely on condemning violence by opposition groups in Algeria.

Middle East Watch urges the European Parliament to give teeth to its own resolutions in support of human rights and democracy in Algeria by linking future loans and loan forgiveness to progress by the Algerian government in ending human rights abuses and in resuming the democratic process. We also urge the European Union to dispatch a fact-finding mission to investigate human rights abuses in Algeria, as the European Parliament did to Syria when deliberating over Fourth Protocol aid. Such a mission should report on governmental and nongovernmental abuses and make recommendations as to how human rights can be effectively promoted. The mission's findings should play a role in the formulation of EU policy toward Algeria.