

Impunity in the Name of Reconciliation: Algerian President’s Peace Plan Faces National Vote September 29

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Introduction

On August 15, the government of Algeria published the text of a long-promised “Charter for Peace and National Reconciliation” in the *Journal Officiel*.¹ This came a day after a major speech by President Abdelaziz Bouteflika announcing that Algerians will be asked to approve the Charter in a referendum on September 29.² The Charter makes good on the pledge first made by President Bouteflika on October 31, 2004, to submit to the electorate a new amnesty plan designed to further what he describes as the peace and national reconciliation process begun by his 1999 Civil Harmony Law (Law n° 99-08).

The Charter is not itself a legal text but rather a declaration of principles concerning the causes and cures of the civil strife that has plagued Algeria since 1992, and a framework for future policies. According to the text, popular approval of the Charter would “mandate the President of the Republic to take all measures that aim to concretize its provisions.” These measures would still have to be enacted into law in accordance with the procedures set forth in the Constitution.³

¹ *Journal Officiel de la République Algérienne Démocratique et Populaire*, no. 55 available at, www.joradp.dz.

² The speech is online at <http://www.algeria-us.org/VOTE%202005/Minist%C3%A8re%20des%20Affaires%20Etrang%C3%A8res%20-%20Algerie.htm> (retrieved August 22, 2005). See presidential decree n° 05-278 of August 14, 2005, on the summoning of the electorate to the referendum of Thursday, September 29, 2005 on national reconciliation. The Charter is an annex to that decree.

³ Abdelaziz Belkhadem, secretary-general of the National Liberation Front party and a close ally of President Bouteflika, explained on national television that the Charter would generate new laws: “Algerians must vote with conviction in order to meet the responsibilities and challenges facing them, because once the Charter is adopted, the measures it provides could translate into laws and legislative texts.” Quoted in Naïma Hamidache, “Belkhadem à propos de la Charte: ‘Le projet est appelé à devenir une loi’”, *L’Expression*, August 23, 2005.

In the six weeks before the referendum, Algerians have an opportunity to study and debate the Charter. Human Rights Watch is concerned both by the content of the Charter and by the political climate in Algeria, which is unfavorable to the free and informed public discussion that Algerians should have about its merits. This background paper enumerates Human Rights Watch's concerns both about the content of the Charter and the circumstances surrounding the referendum.

The Charter reinforces a climate of impunity that has aggravated the country's human rights crisis since the 1990s. It renews and extends the partial amnesty offered by the 1999 Civil Harmony Law to members of armed groups who voluntarily surrendered and turned in their arms. While it does not explicitly mention amnesty for state agents, the Charter contains no language to suggest that their *de facto* impunity will be disturbed. On the contrary, the wording of the Charter gives rise to concern that, if it is approved by voters, an amnesty law for state agents could be introduced that ratifies their impunity.⁴

The Charter addresses the issue of persons who were "disappeared" by state agents and who remain missing, proposing to compensate their families and help them to overcome their ordeal with "dignity." In addition, it mandates President Bouteflika to seek, "on behalf of the nation," the "pardon" of all "victims of the national tragedy." That phrase is not defined in the text but is commonly understood to denote victims on both sides of the political violence involving armed groups and the state forces that became endemic in 1992, and has since claimed the lives of over 100,000 Algerians.⁵

The Charter mentions nowhere the duty of the state to investigate serious human rights abuses, to prosecute those found to be responsible, or to address the right of families of the "disappeared" and other victims and their survivors to know the truth and see that justice is done. The document makes no mention of the possibility of establishing a truth commission of any kind.

The Charter on the one hand offers a gesture of pardon toward victims, but on the other hand seeks to stifle discussion about the traumatic events that caused so much suffering. It states, "In adopting this Charter by their sovereign authority, the Algerian people affirm that no one in Algeria or abroad is empowered to use or to instrumentalize the wounds of the national tragedy to harm the institutions of the Democratic and Popular Republic of Algeria, to weaken the State, to undermine the honor of all its agents who served with dignity, or to tarnish the image of Algeria internationally." This vague and ominous passage could pave the way for legislation penalizing expression that is deemed critical of the state's human rights practices.

⁴ At least one Algerian daily quoted President Bouteflika as saying, in a speech on August 20, 2005, "The Charter for National Reconciliation that is being proposed to the Algerian people, constitutes an immunity for the institutions of the state and, above all, for the army and the security forces." Smail Rouha, « Terrorisme et Reconciliation Nationale : Nul n'est exonéré de sa responsabilité, » *L'Expression*, August 21, 2005. The transcript of the speech on the website of the Presidency, www.el-mouradia.dz, does not contain this sentence.

⁵ Prime Minister Ahmed Ouyahia brought "victims of the national tragedy" into official parlance in 1998, during his earlier term as prime minister. In December of that year, he signed a decree providing compensation to "victims of the national tragedy," including families of persons killed in clashes with government troops. Ouyahia was replaced as prime minister soon after issuing the decree and it was never implemented.

The Charter also implicitly rejects any political role for the banned Islamic Salvation Front (*Front Islamique du Salut*, or FIS) and its leaders, thereby limiting the right of Algerians to choose freely their elected representatives.

Human Rights Watch does not oppose amnesties in principle. It believes, however, that amnesties should not contravene international human rights standards. This means that they must not prevent the emergence of the truth and accountability before the law for individuals who may have been responsible for gross human rights abuses. (Of course, suspected perpetrators must enjoy all of their rights to due process and a fair hearing.) The government should reserve consideration of clemency measures benefiting perpetrators of serious human rights violations until after they have been brought to trial and their responsibilities have been established. Similarly, if authorities were to consider mitigating punishments for serious human rights violations, the reduced punishments should nevertheless remain commensurate with the gravity of the offense.

The fact that the government is putting its proposal before a national referendum does not free it from its international human rights obligations. In a real sense, the referendum on the Charter is asking Algerians to vote on the rights of victims – on whether victims will ever come to know the truth, have a chance to be heard, and see that justice is done. While there is room to debate how the rights of victims are implemented in a given context, a state's internationally recognized human rights obligations are non-negotiable, and cannot be negated by a majority vote.

Background

In 1992, after the government cancelled parliamentary elections that the Islamist Salvation Front was on the verge of winning, Algeria plunged into a cycle of political violence. That violence has since claimed the lives of more than one hundred foreign nationals and more than 100,000 Algerians — a number that includes soldiers and militants, but mostly civilians. President Bouteflika himself has referred in speeches to 200,000 killed.

The vast majority of crimes committed during this period have never received a thorough investigation to identify the perpetrators and establish their responsibilities. The extent of this failure cannot be fully explained by the prevailing insecurity and violence; it represents above all a lack of political will on the part of authorities to establish truth and accountability for human rights violations.

Islamist armed groups that became active after the cancellation of the elections first targeted police and soldiers but then began assassinating civilians. Initially they targeted persons they deemed hostile to their political agenda or who deviated from their interpretation of pious behavior, but later they attacked civilian men, women, and children indiscriminately and on a wide scale. They committed massacres in rural areas

and abducted hundreds, if not thousands, of Algerian civilians, and raped large numbers of women.⁶

The military-backed authorities, acting under a state of emergency declared in February 1992, first interned thousands of suspected Islamists in detention camps in the southern desert. These camps were eventually closed. The security forces engaged in ferocious repression of suspected militants as well as those they suspected of supporting or sympathizing with them. Acting with near-total impunity, army units summarily executed suspects, engaged in reprisal killings against civilians, and carried out large-scale torture of suspects under interrogation. In 1997, the security forces failed signally to intervene as armed groups committed several large-scale massacres of civilians not far from army outposts, raising suspicions about the forces' passivity that have never been allayed by conducting impartial investigations into these events. Algeria's judiciary sentenced thousands of militants and those suspected of assisting them to prison terms in trials that did not meet international fair trial standards. Many were tried in "special courts" established by 1992 anti-terrorism legislation.⁷ Although the special courts were eliminated in 1995, the other main provisions of the anti-terror law, with its vague definition of terrorism, were incorporated that year into the penal code.⁸ The precise number of Algerians still in prison on terror-related charges is not known, but easily exceeds one thousand.

During the mid-1990s, the security forces abducted several thousand Algerians who subsequently "disappeared" and remain missing to this day. Earlier this year, the President's Ad Hoc Commission on the Disappeared said it had registered 6,146 such cases; some Algerian human rights organizations say the real number is much higher.

When President Bouteflika was elected in April 1999, political violence had already been in decline since its peak in the mid-1990s. The security forces had secured most regions of the country, and one of the key armed groups had been observing a cease-fire since the autumn of 1997.

Among President Bouteflika's first acts in office was to propose the Civil Harmony Law (*Loi sur la concorde civile*, Law n° 99-08 of July 13, 1999), which offered militants who surrendered voluntarily an amnesty from prosecution. They were eligible only if they disclosed fully all of their past deeds and had "not committed or participated in the commission of crimes that led to the death of a person or a permanent injury, had not committed a rape," and "had not used explosives in a public place or in a place frequented by the public" (Article 3). Militants who had committed any of these crimes would be eligible for a reduced sentence but not a full amnesty. The Civil Harmony Law passed both houses of parliament with little debate and without a single vote in opposition, entering into force on July 13, 1999. It was then endorsed by an

⁶ On the evolving human rights situation since the 1990s, see the periodic reports by Amnesty International, the International Federation of Human Rights, Human Rights Watch, Algeria-Watch (www.algeria-watch.org), and the U.S. Department of State's annual *Country Reports on Human Rights Practices*.

⁷ Legislative decree n° 92-03 of September 30, 1992 concerning the fight against terrorism and subversion. On the special courts, see Middle East Watch (now Human Rights Watch, Middle East and North Africa Division), "Human Rights Abuses in Algeria: No One is Spared," *A Human Rights Watch Report*, January 1994.

⁸ See Article 87bis of the Penal Code, amended by ordinance n° 95-11 of February 25, 1995.

overwhelming majority of Algerians who voted in a referendum held on September 16 of that year.⁹

A July 20, 1999 executive decree (n° 99-142) following on the Civil Harmony Law set up “Probation Committees” in each *wilaya* (province), headed by the general prosecutor responsible for the area, and composed primarily of representatives of various security forces. The decree charged these committees with examining whether each surrendering militant was eligible under the terms of the amnesty and setting the terms of his probation.

The Civil Harmony Law apparently contributed to reducing political violence but has also stoked controversy, especially in the manner of its application. The law excludes from amnesty those responsible for grave crimes. In practice, however, the Probation Committees worked in a non-transparent manner, with no public accounting of their deliberations or decisions, leaving a widespread impression that, acting on political instructions, they waived applicants through the process without trying to determine whether they committed or ordered the commission of grave crimes.

Also controversial was presidential decree n° 2000-03 dated January 10, 2000, which collectively amnestied the members of two militant groups that had agreed to lay down their arms and disband. The so-called *grâce amnistiante* (grace conferring amnesty) decree was based on the Civil Harmony Law’s Article 41, which exempted from its terms the members of armed groups that agreed without reservation or condition to disband and disarm. Thus, members of the Islamic Salvation Army (*Armée Islamique du Salut*, AIS) and the Islamic League for Preaching and Holy War (*Ligue Islamique pour le Da’wa et le Djihad*, LIDD) benefited from a total amnesty. The decree stated that appended to it was a list of the names of the beneficiaries of this amnesty, but no such list was ever made public. The beneficiaries thus escaped scrutiny of their possible involvement in grave

⁹ Voters were asked, “Are you in agreement with the overall approach of the President of the Republic toward achieving peace and civil harmony?” According to the official tally, 98.63 percent voted yes, with an 85.03 percent rate of participation.

crimes of any kind, and were entitled to enjoy their civil and political rights right away, in contrast to militants who surrendered individually under the Civil Harmony Law.

Authorities claim that more than 5,500 militants took advantage of the Civil Harmony Law and the *grâce amnistiante* to surrender,¹⁰ helping to reduce the number of still-active armed militants below one thousand.¹¹

The amnesty measures provided by the Civil Harmony Law did not extend to state agents, who continue, in principle, to be fully liable under Algerian law for their actions. But the law's offer of a partial amnesty to militants prompted calls for a parallel measure to benefit state agents who might otherwise face prosecution for offenses committed while combating the armed groups.¹²

The Proposed Charter for Peace and National Reconciliation of August 15, 2005

Insufficient safeguards against impunity for grave crimes

As a framework for future legislation and policies, the Charter for Peace and National Reconciliation follows in the path of the Civil Harmony Law. It proposes to amnesty or reduce punishments for militants who surrender, without holding to account many of those responsible for deliberate killings and other serious human rights abuses. While the Charter does not raise the prospect of an amnesty of any kind for state agents, it contains no language to suggest that their *de facto* impunity, which contributed greatly to Algeria's human rights crisis, will be disturbed.

The Charter would cancel all legal proceedings against militants who voluntarily surrendered since January 13, 2000, the deadline for surrender under the Civil Harmony

¹⁰ Ministry of Justice officials, in interview with Human Rights Watch, Algiers, June 21, 2005. Former AIS leader Madani Mezrag was quoted as saying that 3,800 AIS members had laid down their arms and left the *maquis* (bush) as a result of negotiations with the army and the amnesty measures. Fayçal Oukasi, « Madani Mezrag donne le 'Coup d'envoi Islamiste' à la réconciliation », *L'Expression*, August 24, 2005.

¹¹ Authorities say that the Salafist Group for Preaching and Combat, the only armed group still mounting attacks with any regularity, has between 300 and 600 members, according to *Le Monde*. Florence Beaugé, « Le Groupe salafiste pour la prédication et le combat, dernier mouvement armé algérien encore actif », *Le Monde*, June 26, 2005. Estimates ranging from 300 to 1,000 were given by various security officials quoted in Fayçal Oukaci, « Cartographie des maquis », *L'Expression*, August 17, 2005.

¹² One of the most vocal advocates of such an amnesty was Farouk Ksentini, president of the National Consultative Commission for the Promotion and Protection of Human Rights and, since late 2003, also of the Ad Hoc Commission on the Disappeared, both of which report to the President of the Republic. In an interview published in January 2003, he said, "The first beneficiaries of [a general] amnesty would be persons belonging to institutions accused of having carried out disappearances.... Such a measure would have the effect of halting all investigations. To be sure, an amnesty would benefit a certain number of criminals, but that's the way it works, and it's the best we can hope for to enable Algeria to turn the page and move forward." « Farouk Ksentini, président de la Commission nationale de protection des droits de l'homme : 'Une amnistie générale est inéluctable,' » *Le Monde*, January 7, 2003. Speaking to Human Rights Watch, Ksentini linked an eventual amnesty for state agents to the one already enjoyed by militants. "In our report [the report submitted by the Ad Hoc Commission on the Disappeared to the president], we said that if there were to be an amnesty, it should benefit state agents first of all, because their actions were conducted in the battle against terrorism and because the terrorists had already received an amnesty under the Civil Harmony Law." Interview, Algiers, June 15, 2005.

Law, without mentioning any crimes that would warrant their exclusion. (In his speech of August 14, however, President Bouteflika said that the amnesty offer to those who have already surrendered would exclude persons implicated in “collective massacres, rape, and bomb attacks on public places.” The phrase “collective massacres” is not defined in his speech or in the Charter.) Proceedings would also be canceled against all militants who henceforth cease their armed activities and surrender their weapons — provided that they are not implicated in “collective massacres, rape, or bomb attacks on public places.” The same offer and exceptions apply to militants who are presently being sought by the authorities and who turn themselves in, and to persons who have been convicted *in absentia*. Meanwhile, those who have been convicted and imprisoned as militants would be pardoned, provided that they are not implicated in “collective massacres, rape, or bomb attacks on public places.” Suspected militants who are in prison or being sought by authorities, and who do not meet this condition, would be eligible instead for a commutation or a reduction of their sentence.

Persons implicated in providing support for terrorism (as opposed to those who committed the deeds) would benefit from a cancellation of legal proceedings if they reported their activities to the appropriate authorities.¹³ Persons already convicted of providing support for terrorism would be pardoned.

The principle that some crimes are too serious to be amnestied is a good one. But the Charter’s list of excludable crimes is wholly inadequate. It includes only “collective massacres, rape, and bomb attacks on public places.” (The Charter refers to those “implicated” in these crimes without specifying whether this means the actual perpetrators only, or also those who ordered, commanded, or acquiesced in these acts.) This list of three excludable offenses represents a retreat from the list of excludable offenses under the Civil Harmony Law, which included the commission of, or participation in, “crimes that led to the death of a person or a permanent injury” (Article 3). Thus, the perpetrators of one or more individual murders, or acts of torture causing permanent injury, would be ineligible for amnesty under the 1999 law but apparently eligible under the Charter.

Extrajudicial executions constitute grave crimes that, along with acts of torture and enforced disappearance, should not be eligible for an amnesty, according to international standards. Amnesties, pardons and similar national measures that lead to impunity for serious human rights abuses contravene fundamental principles of international law. Authoritative United Nations and regional human rights bodies, as well as international criminal tribunals, have established that there should be no amnesties or similar measures that afford impunity for serious human rights abuses.

The U.N.’s Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity states, “Even when intended to establish conditions conducive to a peace agreement or to foster national reconciliation, amnesty and other measures of clemency shall be kept within the following bounds: (a) The

¹³ Article 87*bis* of the penal code (enacted February 25, 1995) defines “terrorism” and “subversion” and also offenses relating to supporting terrorism and subversion. These include, among others, creating or participating in a terrorist organization, praising terrorism, and distributing tracts that praise terrorism.

perpetrators of serious crimes under international law may not benefit from such measures until such time as the State has met the obligation[]” to “undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished.” The Updated Principles define the phrase "serious crimes under international law" to include, among others, genocide, crimes against humanity, and “other violations of internationally protected human rights that are crimes under international law and/or which international law requires States to penalize, such as torture, enforced disappearance, extrajudicial execution, and slavery.”¹⁴

The Charter does not specify what mechanism will ensure that perpetrators of “collective massacres,” rape, and bombing attacks on public places are excluded from the amnesty. Presumably an ancillary text will define this once the Charter is approved, just as the government decreed the creation of Probation Committees, following adoption of the Civil Harmony Law, to review individual applications for amnesty.

The record of these committees inspires little confidence that in the future, perpetrators of excludable offenses will be vetted and declared ineligible for amnesty. Any future mechanism of vetting amnesty applicants should be transparent both in its deliberations and in the decisions it takes. It should be open to receiving information from members of the public. In addition, prior to the September 29 referendum on the Charter, and before any further review of amnesty applications, authorities should release a detailed account of the work of the Probation Committees.

Proposals to pardon or reduce the sentences of convicted prisoners must respect the principle that those convicted of serious human rights abuses should receive punishments that are proportional to the crimes they committed. The Charter provides no such guarantees. It proposes to pardon persons who were convicted for “supporting terrorism” or for committing acts of violence other than “collective massacres, rape, and bomb attacks on public places.” Thus a militant convicted of one murder, or even a series of individual murders, would be released from prison regardless of how little time he has served. To free after six months in prison a militant who committed deliberate murders would contravene basic standards of justice insofar as the time he served is not proportional to the offenses he committed.

Prisoners ineligible for release under the terms of the Charter — in other words, those convicted for their role in “collective massacres,” rape and bomb attacks in public places

¹⁴ E/CN.4/2005/102/Add.1, 8 February 2005, Commission on Human Rights, Sixty-first session, Item 17 of the provisional agenda. The Principles constitute authoritative guidelines representing the prevailing trends in international law and practice, and reflect the contents of international jurisprudence and the best practice of States.

— would be eligible for a reduction of their sentences. Again, such a measure would be consistent with international norms so long as the reduced sentences were still proportional to the gravity of the offenses committed.

Of course, the principle that perpetrators of serious human rights abuses should receive a punishment commensurate with their crimes applies only to persons who have been convicted in proceedings that were fair, and that provided them a meaningful opportunity to appeal the verdict. As noted above, many of those imprisoned in Algeria since 1992 for terrorism-related offenses did not benefit from a fair trial. They were convicted on the basis of coerced confessions and proceedings in which their due process rights were not respected. Persons who were convicted in an unfair trial for committing serious human rights abuses should be granted new and equitable trials or if a diligent investigation fails to turn up evidence that would justify charging them anew they should be released.

Disregard for rights and aspirations of families of the “disappeared”

The Charter lists a series of measures designed to “help bring about a definitive solution to the issue of the disappeared.” They constitute President Bouteflika’s first policy initiative on the “disappeared” since he received the final report and recommendations of his Ad Hoc Commission on the Disappeared at the end of March.¹⁵

The Charter proposes some welcome steps but utterly ignores the state’s obligation under international law to investigate the thousands of “disappearances” carried out by its agents and the obligation to bring the perpetrators to justice, as well as the right of families to know the truth about what happened to their relatives.

As noted above, the Charter proposes an amnesty only for members of armed groups. It proposes no parallel measure to forgive “disappearances” and other crimes committed by state agents and their allies in civilian “self-defense” groups. Nevertheless, the near-total absence of any recognition in the Charter that state officials and agents were responsible for massive and systematic abuses only reinforces the impunity they already

¹⁵ That report has not been made public. On the Ad Hoc Commission, see Human Rights Watch, “Truth and Justice on Hold: The New State Commission on ‘Disappearances,’” *A Human Rights Watch Report*, vol. 15, no. 11(E) [online] <http://www.hrw.org/reports/2003/algeria1203/>.

enjoyed in practice for abuses committed during the conflict. The Charter's only allusion to abuses committed by state agents, located in the section on "disappearances," is intended to exonerate state institutions and blame rogue individuals:

The sovereign Algerian people reject any allegation intended to impute to the State a policy of "disappearances." The people refuse to allow the reprehensible actions of state agents, who were punished by the justice system whenever those actions were proven, to serve as a pretext for discrediting the whole of the security forces who accomplished their duties, with the support of the citizenry and in the service of the homeland.

The Charter thus endorses the view expressed by Farouk Ksentini, president of the Ad Hoc Commission on the Disappeared, who insists that state agents acting on their own, but not state institutions, were responsible for "disappearances." The state was "responsible but not guilty," according to his formulation, and responsible only in the sense that it had failed in its duty to protect Algerian citizens.¹⁶

The U.N. Declaration on the Protection of all Persons from Enforced Disappearances takes a more affirmative view of state responsibility when "disappearances" are carried out by its agents. Article 5 states, "In addition to such criminal penalties as are applicable, enforced disappearances render their perpetrators *and the State or State authorities which organize, acquiesce in or tolerate such disappearances* liable under civil law, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law."¹⁷ [Emphasis added.]

Both Ksentini and the draft Charter blame rogue agents while exonerating state institutions even though no official inquiry has ever been conducted to determine the facts. The Ad Hoc Commission on the Disappeared was in no sense a commission of investigation, as its bylaws and the statements of President Bouteflika and the commission's president made clear.¹⁸ Its mandate was not to investigate but to serve as an "interface" between families of the "disappeared" and the administration. Algeria's courts, meanwhile, have contributed nothing to exposing the facts about disappearances, even though hundreds of families filed complaints concerning the abductions of

¹⁶ Explaining his often-quoted argument that with respect to "disappearances," the state is "responsible but not guilty," Ksentini told Human Rights Watch, "Between 1992 and 1998, the period that concerns us for 'disappearances,' the state was the first of the disappeared. The state collapsed. Certain agents of the state, in the struggle against terrorism, committed abuses. These abuses were never ordered by state institutions. We found no document, no testimony showing that state institutions had given instructions." Interview, Algiers, June 15, 2005. The Commission's non-discovery of evidence incriminating state institutions has to be seen in light of the fact that it had no powers of investigation.

¹⁷ U.N. General Assembly resolution 47/133 of 18 December 1992.

¹⁸ See Human Rights Watch, *Truth and Justice on Hold*. That report reprints as an appendix presidential decree n° 03-299 of September 11, 2003 creating an ad hoc commission on the question of the disappeared, published in the *Journal Officiel* of September 14, 2003. In his speech introducing the body on September 20, 2003, President Bouteflika said, "The ad hoc commission must not be conceived as a commission of investigation that would take the place of the appropriate administrative and judicial authorities. It is an operations center and an interface between the public authorities and the families who are concerned." This speech is online at the website of the Presidency, www.el-mouradia.dz (retrieved August 23, 2005). Farouk Ksentini, president of the Ad Hoc Commission, told Human Rights Watch at the conclusion of the commission's term, "Our mandate does not give us power to investigate, but only to reflect." Interview, Algiers, June 15, 2005.

relatives, some of them providing the names of eyewitnesses and information about the suspected perpetrators.

In the view of Human Rights Watch, “disappearances,” when practiced on the scale that they were carried out in Algeria during the mid-1990s, constitute a crime against humanity. (The wide-scale practice of abducting and killing civilians carried out by armed groups also constitutes, in our view, a crime against humanity.) The Ad Hoc Commission on the Disappeared reported having handled 6,146 cases attributable to state agents in provinces across the country, almost all of them conducted between 1994 and 1997. The actual number is probably higher.

Moreover, a growing body of international law views “a disappearance” as a “continuing offense,” so long as the whereabouts of the missing person have not been clarified.¹⁹

Despite the state’s vague acknowledgment of responsibility, the perpetrators of these “disappearances” have escaped punishment, and what they did with the more than 6,000 persons they abducted remains secret a decade after the fact. This strongly points to a policy of “disappearances” in which high-level officials participated or acquiesced, and for which they should be held accountable. The alternative hypothesis presented in the Charter — blaming more than 6,000 “disappearances” on agents acting on their own — is simply not credible absent an impartial and transparent investigation into what took place.

The Charter also makes the dubious assertion that state agents who committed abuses “were punished by the justice system whenever those actions were proven.” While there have been isolated cases of policemen brought to trial for human rights abuses, the rule has been impunity for gross violations. This has been particularly true for agents of the Department of Intelligence and Security (*Département du renseignement et de la sécurité*, formerly *la Sécurité Militaire*), the powerful agency whose agents are believed responsible for a huge share of “disappearances.” To the best of our knowledge, no state agent has ever been held responsible for participating in a “disappearance,”²⁰ although it appears that in some cases, a few members of army-backed civilian defense groups have been brought to court for their role in abductions.²¹ The fact that state agents have thus far escaped accountability for “disappearances” is further evidence implicating the institutions themselves in these crimes. It too is a matter that should be part of an official investigation into “disappearances.”

The Charter’s declaration that state institutions bear no responsibility for the commission of disappearances is an attempt to preempt further inquiry into the matter.

¹⁹ The U.N. Declaration on the Protection of All Persons from Enforced Disappearances states, in Article 17, “Acts constituting enforced disappearance shall be considered a continuing offense as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.”

²⁰ Ksentini, echoing what organizations of families of the “disappeared” have been saying, told Human Rights Watch, “The disappearances question should be addressed by the justice system, but it has not done its job in a single case.” Interview, Algiers, November 6, 2002.

²¹ On the “self-defense” groups, see the chapter entitled “Militias Armed by the State” in Amnesty International, “Algeria: Truth and Justice Obscured by the Shadow of Impunity,” November 8, 2000 [online] <http://web.amnesty.org/library/Index/ENGMDE280112000?open&of=ENG-DZA>.

It may also prejudice the rights of families by making it harder for them to sue those institutions in domestic courts for civil damages resulting from the abduction of their relatives.

On the positive side, the Charter states, “‘Disappeared’ persons are to be considered victims of the national tragedy and their beneficiaries are entitled to compensation.”²² The Charter mandates the president to seek, “on behalf of the nation, the pardon of all victims of the national tragedy.” It commits the state to “take all appropriate measures to enable the beneficiaries of disappeared persons to cope with this terrible ordeal in dignity.”

International norms affirm the right to reparation. The U.N. Declaration on the Protection of all Persons from Enforced Disappearance states, “The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation.”²³

Many families of the “disappeared” need assistance desperately. In addition to the psychological trauma and personal loss, the “disappearance” of a bread-winner is usually a financial blow and administrative nightmare for the family. When the victim was abducted, his salary was cut off. His family cannot dispose of his property and savings in the absence of a death certificate. If the “disappeared” person is a father, his absence poses an obstacle to registering children at school, obtaining their national identity cards, and obtaining permission for them to travel abroad.

Families of the “disappeared” also need moral rehabilitation, a fact that is acknowledged by the Charter and by President Bouteflika’s speech of August 14.²⁴ They have suffered years of social ostracization, due in no small part to efforts by Algerian authorities to cast doubt on the families’ assertion that it was state agents who abducted their relatives, and to suggest that many of the supposed “disappeared” had in fact gone off to join armed groups. After first ignoring the issue, much of the Algerian media participated in this campaign to discredit the families and their claims, although coverage has grown more balanced in recent years.

The Charter does not make clear whether persons kidnapped by armed groups and who are still missing are to be included among the “disappearances” for which the state will provide compensation and assistance. The Charter seemingly refers to these cases when it declares, “In numerous cases...disappearances are the consequence of the criminal

²² Existing legislation already provided state compensation to certain categories of victims of terrorism, notably executive decree n° 99-47 of February 13, 1999. That decree contains provisions for the compensation of “victims of bodily or material harm from terrorist acts” and also of “accidents occurring in the framework of the anti-terrorist struggle.”

²³ U.N. General Assembly resolution 47/133 of 18 December 1992, Article 19.

²⁴ President Bouteflika said, “We share the pain of families of the ‘disappeared,’ because the victims are our fellow citizens and the families who are suffering are part of us. I hope that in our faith and in our common commitment to national reconciliation, these families, next to whom we stand, will be able to find the comfort necessary to heal their wounds and overcome their sorrow.”

actions of bloody terrorists who arrogated to themselves the right of life and death over anyone they wished, Algerian or foreigner.” The Charter goes on to state, “The State will take charge of handling the cases of *all* persons who ‘disappeared’ in the context of the national tragedy and will take the measures warranted by the situation.” [Emphasis added.]

The Charter acknowledges the need to help families of the “disappeared” to “cope with this terrible ordeal in dignity.” It unfortunately does not contain similar language about the need to assist another category of victims of political violence in need of special attention: women who have been raped. While the Charter correctly classifies rape as a grave crime that should not be subject to an amnesty, it does not explicitly mention rape victims, who remain in critical need of assistance to address their ordeal and its aftermath in all of its dimensions.

While the Charter is a step forward in terms of acknowledging state responsibility and the need for compensation and rehabilitation, it contains no parallel commitment to provide families any information whatsoever concerning the fate of their missing relatives. The families of the “disappeared” have endured years of uncertainty about the fate of their relatives; their efforts to obtain information from state bodies and the courts have been fruitless. Some families cling to the hope that their relatives are still alive and in secret detention; if they are dead, they want to know where they are buried so they can finally mourn in accordance with their preferences and traditions. Others seek information about why their relatives were arrested and what happened to them afterward, hoping to vindicate their claim that their missing relative had done nothing to warrant arrest.

Given that the Charter makes no explicit commitment to providing families the truth, it is that much more disturbing that the Charter’s proposed measures of assistance and compensation are addressed exclusively to the beneficiaries of the “disappeared” and not to the “disappeared” themselves. This would be appropriate only if state officials had confirmed in a verifiable fashion that each of the “disappeared” was in fact now dead, something they have never done, either collectively or individually.

The right to know is commanding increased attention in international law, although it is not yet definitively established in human rights treaties and covenants. The experience of post-conflict societies demonstrates that reconciliation is unlikely without disclosure of the truth, both for the benefit of victims and their survivors and for the society as a whole. Argentina, Chile, Guatemala, South Africa, and Sri Lanka are among the many countries that established national truth commissions that published extensive reports of their findings. Argentina, Guatemala, and Sri Lanka each experienced, like Algeria, “disappearances” numbering in the many thousands.²⁵

In 2005, the U.N. Commission on Human Rights passed a resolution entitled, “The Right to the Truth.” It stresses “the imperative for society as a whole to recognize the right of victims of gross violations of human rights and serious violations of

²⁵ The site, <http://www.usip.org/library/truth.html>, provides useful comparative information on national truth commissions.

international humanitarian law, and their families, within the framework of each State's domestic legal system, to know the truth regarding such violations, including the identity of the perpetrators and the causes, facts and circumstances in which such violations took place." The resolution goes on to recognize "the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights."²⁶

The U.N.'s Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity states, "Every person has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations." The Principles also state, "Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate."

Exclusion of the FIS from Political Life

The Charter proposes to ban from political life those "responsible for instrumentalizing religion" for political ends. Algerians and others see this formulation as targeting the Islamist Salvation Front (FIS) and its leaders. The military-backed government banned the FIS after that party won the first round of parliamentary elections in December 1991. The Charter states:

Although the Algerians are a forgiving people, they cannot forget the tragic consequences of the nefarious instrumentalization of the precepts of Islam, the state religion. They affirm their right to protect themselves from any repetition of such missteps and decide, in a sovereign manner, to forbid those responsible for that instrumentalization of religion any possibility of exercising any kind of political activity, regardless of the banner.

The sovereign Algerian people decide also that the right to engage in political activities cannot be extended to anyone who participated in terrorist activities and who, in spite of the frightful human and material harm inflicted by terrorism and by the instrumentalization of religion for criminal ends, refuses to recognize his responsibility in conceiving and putting into place a pseudo-Jihad policy against the nation and the institutions of the Republic.

The Charter does not spell out the details of how the prohibition would be carried out. Algeria's 1997 law on political parties prohibits, in Article 5, parties "that found their creation or their action on a basis that is religious, linguistic, racial, gender, corporatist,

²⁶ U.N.C.H.R. Resolution 2005/66, adopted April 20, 2005.

or regionalist.” Article 17 gives the interior minister the authority to refuse applications for new political parties.²⁷

It is not clear whether approval of the Charter would lead to the drafting of new legislation or a tougher application of existing legislation. At stake is the right of Algerians to freedom of association and the right to take part in self-government through free and fair elections, a right guaranteed by Article 25 of the International Covenant on Civil and Political Rights.²⁸ Human Rights Watch recognizes that a state may ban from political life individuals who practice or who incite others to violence, as well as parties and organizations that practice or incite violence. However, the criteria for imposing such a ban must be clear, based on verifiable facts, and subject to review by an impartial body such as an independent court. Prohibitions must be subject to a meaningful appeals process.

The decision by the military-backed government to ban the Islamic Salvation Front in February 1992 did not meet these criteria.²⁹ Since then, Algeria has legalized three Islamist parties that have representatives in the National Assembly: the Movement of Society for Peace, the Movement for National Reform, and the Nahdha movement. But the FIS remains banned, and the authorities have since denied other new parties legal recognition, in violation of the right of Algerians to form political parties. For example, Wafa, the party of former foreign minister Ahmed Taleb Ibrahimi, was refused legal recognition in 2000 on the grounds it was an attempt to resurrect the FIS. Also in 2000, authorities refused to legalize the Democratic Front, a new party headed by former prime minister Sid Ahmed Ghazali.

Thus, Algeria has used existing laws abusively to refuse legal recognition to political parties. The language of the Charter raises concern that the pattern will continue.

The Charter’s Rejection of Collective Guilt

The Charter contains a plea to end any form of “exclusion” directed at relatives of “terrorists,” and pledges unspecified measures of “national solidarity to help these families who were impoverished and traumatized by terrorism through their relatives’ involvement in it.” In his speech of August 14, President Bouteflika said, “Our religion of clemency and brotherhood teaches that persons are responsible only for their own acts. The families, the widows, the orphans of those who joined the ranks of the terrorists cannot be held responsible for those acts; nor can they be rejected by our society.”

²⁷ Law n° 97-09 of March 6, 1997, online in French at www.lexalgeria.net/politiq.htm.

²⁸ Article 25 reads, “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.”

²⁹ See Middle East Watch (now Human Rights Watch, Middle East and North Africa Division), “Human Rights in Algeria Since the Halt of the Electoral Process,” *A Human Rights Watch Report*, vol. 4, no. 2(E), February 1992 available at, <http://hrw.org/reports/1992/algeria/>.

This plea for individualized guilt is a welcome gesture. More appropriate and perhaps also more helpful to national reconciliation would be acknowledgment by the state of its own role in persecuting and discrediting the relatives of suspected militants. In many instances, security forces targeted persons for arrest, torture, and even “disappearance” whose only apparent “offense” was a family or spousal relationship with a suspected militant.

Toward the Referendum: Promoting an Open Debate

The text of the Charter unveiled on August 15 is a document dictated from above, rather than the product of any process of formal consultation with the Algerian public. Except for meetings that the president’s Ad Hoc Commission on the Disappeared held with families of the “disappeared,” — and which were themselves controversial³⁰ — the drafting of the Charter involved no formal consultations with victims of human rights violations about their demands and aspirations.

The Charter fulfills the pledge of President Bouteflika, made in his speech of October 31, 2004, to seek the people’s approval for a general amnesty to consolidate “national reconciliation.” An officially encouraged, months-long national mobilization in favor of a general amnesty kicked into high gear soon after the October 31 speech, even before anyone knew the details of the president’s plan. This campaign included a National Council for the General Amnesty, with former president Ahmed Ben Bella as its honorary head. (That body reportedly renamed itself the National Council for Peace and National Reconciliation immediately after the President unveiled his Charter for Peace and National Reconciliation.)

Algerians now have an opportunity to vote for or against the Charter. It is hard to see how an informed, deliberative national discussion of such an important initiative can take place in the space of the forty-five days between publication of the text and the referendum. (This is the minimum period required by Article 168 of the election law.³¹)

³⁰ During the summer of 2004, the Ad Hoc Commission on the Disappeared summoned families one by one to answer orally a series of questions contained in a written questionnaire, including “What are the wishes of the family of the ‘disappeared’?” and “Would the family accept compensation if it were offered by the State?” Commission President Ksentini told Human Rights Watch in a June 15, 2005 interview that 5,300 such questionnaires had been completed. He stated that sixty-seven percent of the respondents said they would accept compensation from the state. The way that these interviews were conducted angered many advocates of the “disappeared.” Members of two organizations, SOS Disparus and the National Association of Families of the Disappeared, told Human Rights Watch, in interviews in Algiers on June 14 and 15, 2005, that the officials who summoned the families insisted on a “yes” or “no” answer to the complicated question of compensation; pressured some respondents to respond affirmatively; summoned wives of “disappeared” persons to complete the questionnaire in some cases when mothers refused to sign; and declined to provide families with copies of their signed questionnaires. See also the joint communiqué of SOS Disparus and the Collectif des familles de disparu(e)s en Algérie, “Le dossier des Disparitions forcées n’est pas soluble dans l’indemnisation,” July 28, 2004 [online] www.algeria-watch.org/fr/mrv/mrvdisp/collectif_indemnisations.htm (retrieved August 26, 2005). In his June 15, 2005 interview with Human Rights Watch Ksentini confirmed that the commission did not give families a copy of their signed questionnaires but denied that any pressure had been applied to respondents. He said also that the questionnaire was merely a survey and did not engage the respondents in any way. However, he has invoked the reported finding that two-thirds of families favor compensation in order to justify a compensation-centered approach to the problem, and to claim that advocates of the “disappeared” who insist above all on the families’ rights to truth and justice do not represent the majority of families.

³¹ Law n° 97-07 of March 6, 1997, online in French at www.lexalgeria.net/elect.htm.

A number of factors have hindered public discussion up to this point and threaten to chill debate in the weeks prior to the referendum.

First, Algeria's media is unlikely to promote a full and wide-ranging public consideration of the Charter. The state-controlled television and radio have until now largely ignored critics of the general amnesty proposal and of the state's handling of the issue of the "disappeared." Some of Algeria's privately owned dailies have done a far better job of reporting criticisms and questions about the amnesty project, but their readership is limited and they continue to face pressure from authorities. Since President Bouteflika's re-election in April 2004, the government has prosecuted a number of editors, journalists and cartoonists for articles and commentary critical of the president and other high officials.

Second, Algerians continue to live under a thirteen-year-old state of emergency that limits civil liberties. For example, the emergency law empowers the minister of interior and governors (the *wali*) to ban any public gathering deemed likely to disturb the public order and peace.³² Authorities have prevented some organizations critical of the government, like the Algerian League for the Defense of Human Rights, from holding meetings in public halls. The government has resisted calls to lift the state of emergency, and it is not mentioned in the Charter, even though the Charter proclaims that terrorism — the supposed basis for the law of exception — has been largely vanquished: "Terrorism has been, by the grace of God, the All-mighty and Compassionate, combated and brought under control throughout the national territory, which has experienced a restoration of peace and security."

Third, the president himself has actively discouraged debate by attacking those who criticize the tenets of the Charter. In his speech on August 14, the day before it was unveiled, he said,

There are those, voices we know, who will no doubt try to block this popular and legitimate aspiration, this profound wish for peace, this search of ours for a national reconciliation that will enable Algeria to recover the strength of its national unity that enabled it to oppose its enemies through the ages.

Those voices will no doubt be the same ones that, at home and abroad, stood by in silence when our flesh and our souls were ravaged by horrible bloodbaths. Their guilty silence yesterday disqualifies them from standing as arbiters of the sovereign public will, just as they already were discredited in their vain attempts to block the Civil Harmony.

Some of the President's closest allies have adopted this kind of divisive and intimidating rhetoric since the plan was unveiled, including Abdelaziz Belkhadem, secretary-general of the National Liberation Front party, which is part of the ruling coalition. Urging a yes vote, Belkhadem said on national television on August 21, "Some persons have an interest in feeding the fire of

³² Presidential decree n° 92-44 of February 9, 1992, imposing the state of emergency, Article 7.

discord so that our country will not regain its stability. More than ever, we are being summoned to mobilize public opinion against those voices both inside Algeria and abroad.”³³

Honest people can disagree about the merits and the terms of an amnesty, and how to rehabilitate victims following years of bloodshed. Algerians must find their own formula, ideally following a national debate that is informed, unfettered, and unrushed. Regrettably, the president’s preemptive attacks on those who would criticize the Charter chill debate rather than encourage it.

Yet even if the national debate and referendum were to happen under ideal circumstances, they cannot become the vehicle for depriving human rights victims or other Algerians of their internationally recognized rights. Those rights are not subject to a majority vote, no matter how free or democratic it may be.

Recommendations

In crafting an agenda for what they term “national reconciliation,” Algerian authorities should:

- Ensure that any measures of amnesty are crafted to exclude those who perpetrated or bear command responsibility for serious human rights abuses, whether they are agents of the state or members of armed groups. The definition of grave abuses should encompass not only “collective massacres, rape and bomb attacks on public places,” — the crimes specifically cited in the Charter for Peace and National Reconciliation — but also extrajudicial executions, torture, and forced disappearances. Any measures of grace benefiting such perpetrators should be granted only after they have been tried in court, and should ensure that the punishment received remains proportional to the gravity of the crimes for which they have been convicted.
- Disclose the decisions rendered by the Probation Committees that were established by the 1999 Civil Harmony Law and tasked with examining applications for amnesty from surrendering militants. Such disclosure will enable the public to evaluate the record of these committees in identifying and excluding from amnesty the perpetrators of grave human rights violations, and contribute to an informed debate on how to ensure an effective vetting process for future amnesty-seekers.
- Ensure that any plan to definitively address the issue of “disappearances” respects the right of victims and their families to truth and justice. The internationally recognized human rights of victims must not be compromised, even by a plan that has been adopted through a democratic process. The government can fulfill the right to know through various means, including by

³³ Quoted in Naïma Hamidache, “Belkhadem à propos de la Charte: ‘Le projet est appelé à devenir une loi’”, *L’Expression*, August 23, 2005.

the establishment of a truth commission whose powers, resources, mandate and independence conform to international standards for effective truth commissions.

- Ensure that any global effort to assist victims of political violence pays particular attention to the special social and psychological needs of women who were raped.
- End, and avoid enacting new, abusive restrictions on the right of Algerians to form political parties. The criteria for banning of a political party, or the banning of an individual from political life, must be clear and legitimate, such as the practice of or incitement to violence. Prohibitions must be subject to a meaningful review by an impartial body, such as an independent court.
- Encourage a free and informed debate of the Charter for Peace and National Reconciliation by allowing critics of the plan to express themselves freely on national television and radio, by easing political pressure on the print media, and by allowing all public meetings called to discuss the Charter. The President should encourage the debate by ceasing verbal attacks on those who would question his proposed Charter. He should ensure that a referendum take place only after Algerians have had the opportunity to engage in a free and informed deliberation on the Charter, one in which victims of human rights abuses have had the opportunity to be heard.