

**Algeria: Long Delays Tainting Terrorism Trials
Courts' Refusal to Hear Key Witness Violates Due Process
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President Abdelaziz Bouteflika speaks often about judicial reform, but when it comes to trying suspected militants, reform does not yet mean fairness.

Sarah Leah Whitson, Middle East and North Africa director

(Beirut) – The Algerian authorities' long delays in bringing key terrorism cases to trial undermines the defendants' right to a fair trial.

Human Rights Watch examined the cases of eight suspects who were held for up to six years in secret detention outside of the judicial system, and who now face trials of questionable fairness because the judges refuse to allow an important witness to testify. Most of the defendants are charged with involvement in the kidnapping of a group of 32 European tourists in the Algerian desert in 2003. These cases dramatize the continuing obstacles faced by those charged with terrorist offenses, even after authorities lifted a state of emergency in 2011, to obtaining justice that is both prompt and fair, Human Rights Watch said.

"President Abdelaziz Bouteflika speaks often about judicial reform, but when it comes to trying suspected militants, reform does not yet mean fairness," said Sarah Leah Whitson, Middle East and North Africa director of Human Rights Watch.

After lifting the state of emergency, Algeria has finally brought to trial men whom it had placed in secret detention for months or years. But the delays in their trials and the courts' refusal to summon key witnesses suggest that the injustice against these men is continuing, Human Rights Watch said.

The justice system has divided the case of the 2003 kidnapping into several trials. Some have been stalled for more than a year over the courts' refusal of defense motions to summon the alleged ringleader of the operation, who is in detention, to testify.

Human Rights Watch examined these cases with assistance from one of the key defense lawyers and by reviewing reports in the Algerian media. Algerian authorities have not approved requests made since 2010 by Human Rights Watch for visas to conduct an official mission to the country.

Responding to democracy protests in the region and in Algeria at the beginning of 2011, the government lifted the 19-year state of emergency and in April of that year, President Bouteflika pledged to reform laws and the judicial sector. On March 19, 2012, the president said that, "Plans for reforming the judiciary, which figured among the national priorities, have progressed in structural, juridical and human terms."

However, Algeria's handling of the alleged ringleader of the 2003 kidnapping operation, Amari Saïfi (known as "El Para"), illustrates the unjust treatment to which terrorism suspects can still be subjected. Algerian authorities took him into custody in 2004 and held him in an undisclosed location, without access to a lawyer, for more than six years, Amine Sidhoum told Human Rights Watch. Sidhoum is the lawyer who represented Saïfi after he was finally brought before a judge in 2011. Even though Saïfi was known to be in secret custody beginning in 2004, Algerian courts went ahead and tried him in absentia, sentencing him to death at one trial and to life in prison at another, violating his right to be present at his own trial.

Authorities finally brought Saïfi before an investigating judge in March 2011 and transferred him to Serkadji Prison in Algiers. But he still has not been brought to trial, even though Algerian law grants him the right to a new trial after his convictions in absentia. Judges also have refused to summon him as a witness in the trials of the men he allegedly led in the kidnapping operation.

“The handling of Amari Saïfi suggests that the courts are unwilling or unable to respect the rights of defendants in major terrorism cases,” Whitson said. “The courts should respect due-process rights by summoning witnesses and trying defendants on the basis of a fair examination of all available evidence.”

In another case in which the courts blatantly disregarded the rights of terrorism suspects to a prompt and fair trial, Malek Medjnoune and Abdelhakim Chenoui spent more than 11 years in pre-trial detention – a violation of their right to a prompt trial and to the presumption of innocence. In July 2011, they were convicted and sentenced in a one-day trial to 12 years in prison for complicity in the assassination of the celebrated poet-singer Matoub Lounes in June 1998, and membership in a terrorist group.

Both men said they were innocent and had been tortured during months of incommunicado detention before they were first brought to court in 2000 and charged. Medjnoune’s father, in a complaint filed with the United Nations Human Rights Committee, stated that his son was held in incommunicado detention from September 28, 1999 until he was brought before an investigating judge on May 2, 2000. Human Rights Watch found no evidence that the court investigated the allegations about torture. Chenoui and Medjnoune were freed in March and May 2012, respectively, because their years in pre-trial detention were applied to their sentence.

“Algeria needs to show that even those charged with heinous crimes have access to the judicial system,” Whitson said. “And suspects need to be presumed innocent until proven guilty if the verdicts of Algerian courts are to have legitimacy.”

Secret Detentions Under the State of Emergency

On February 9, 1992, leaders of a military-backed coup issued a decree imposing a state of emergency shortly after halting legislative elections that an Islamist political party, the Islamic Salvation Front, was poised to win. The emergency decree gave authorities powers to restrict civil liberties and to detain people without charge.

In the months that followed, sporadic violence by Islamist armed groups became endemic, targeting both civilians and members of the security forces. The security forces engaged in fierce repression but also offered amnesty to militants who surrendered or renounced armed operations.

The violence continued throughout the 1990s, tapering off by the end of that decade. The number of people killed is not known but most estimates are between 100,000 and 200,000, most of them civilians.

Algeria continued to experience sporadic attacks by armed groups after 2000, including, in recent years, by groups claiming allegiance to Al-Qaida.

Violations of rights associated with the state of emergency included holding a group of terrorism suspects in secret custody for years, outside any form of judicial review or oversight. Since at least 2004, Algerian media have reported, citing official sources, the arrest or surrender of a number of people suspected of participating in the kidnapping in the Algerian Sahara of a group of 32 European tourists in February 2003, and in deadly attacks on military personnel at roughly the same period. Algeria said that the militant group behind this kidnapping was the Salafist Group for Preaching and Combat (Groupe salafiste de predication et de combat, GPSC). A commando operation freed 17 of the hostages in May 2003, and another 14 were freed in August 2003 after negotiations. One hostage died in captivity, apparently due to heatstroke.

After Algerian media reported arrests of the alleged kidnapers, some were placed in secret custody, removed from judicial review or oversight for months or years. Even though they were in custody, courts tried and convicted some of them in absentia and in other cases refused to summon them to testify at the trials of other defendants where their testimony seemed relevant.

Authorities called this practice of secret detention “house arrest” (assignation à résidence). The apparent basis for this practice is articles 5 and 6 of the 1992 emergency decree (presidential decree no. 92-44 of February 9, 1992 imposing the state of emergency). Article 5 provided:

The minister of interior and local government may decide to place in a security facility, in a specified place, any adult individual whose activity is determined to be dangerous for the public order, public security, or the proper operation of public services.

Under Article 5, the security facilities were to be set up by order of the interior minister and local officials. No list of such facilities, nor of the detainees placed in them, was ever made public, as far as Human Rights Watch could determine.

Article 6(4) of the emergency decree empowered the ministry of interior and local government and governors “to assign to a residence any adult whose activity is determined to be harmful to the public order or to the functioning of public services.”

Those placed in this form of detention did not, as far as Human Rights Watch has been able to determine, benefit from any regular form of judicial review of their continued detention, despite this fundamental requirement in international law, which applies even during genuine states of emergency. The UN Human Rights Committee in its General Comment on states of emergency, held:

The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party’s decision to derogate from the [International Covenant on Civil and Political Rights].

The detainees removed from the judicial system and placed in “assigned residence” during the state of emergency include Amari Saïfi, Hassan Hattab, Otmane Touati, Lounis Mokadem, Kamel Djermane, Fateh Bouderbala, Ali Ben Touati, and Khalouf Feres, whose cases were reviewed by Human Rights Watch. Authorities later charged most of them with complicity in the 2003 kidnappings, among other charges.

Algerian authorities stated throughout the decade beginning in 2000 that the continued risk of terrorism justified maintaining the state of emergency, but then lifted it on February 23, 2011, after weeks of rioting by youths and small pro-reform street demonstrations in the capital, and after uprisings erupted in neighboring Tunisia and Libya and elsewhere in the region.

President Bouteflika then pledged both legal and structural reforms, including in the judiciary. In his annual oration at the opening of the judicial year on December 21, the president spoke, according to El-Moudjahid, of “reforms of the judicial sector [that would] restore the confidence of the citizen in general and those before the justice system in particular, in their judicial system.” This goal, he said, “depends on the behavior of judges, on their impartiality ... and their performing well through timely and objective verdicts in conformity with the law.” They are to “apply the law in complete loyalty to it and independence.”

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