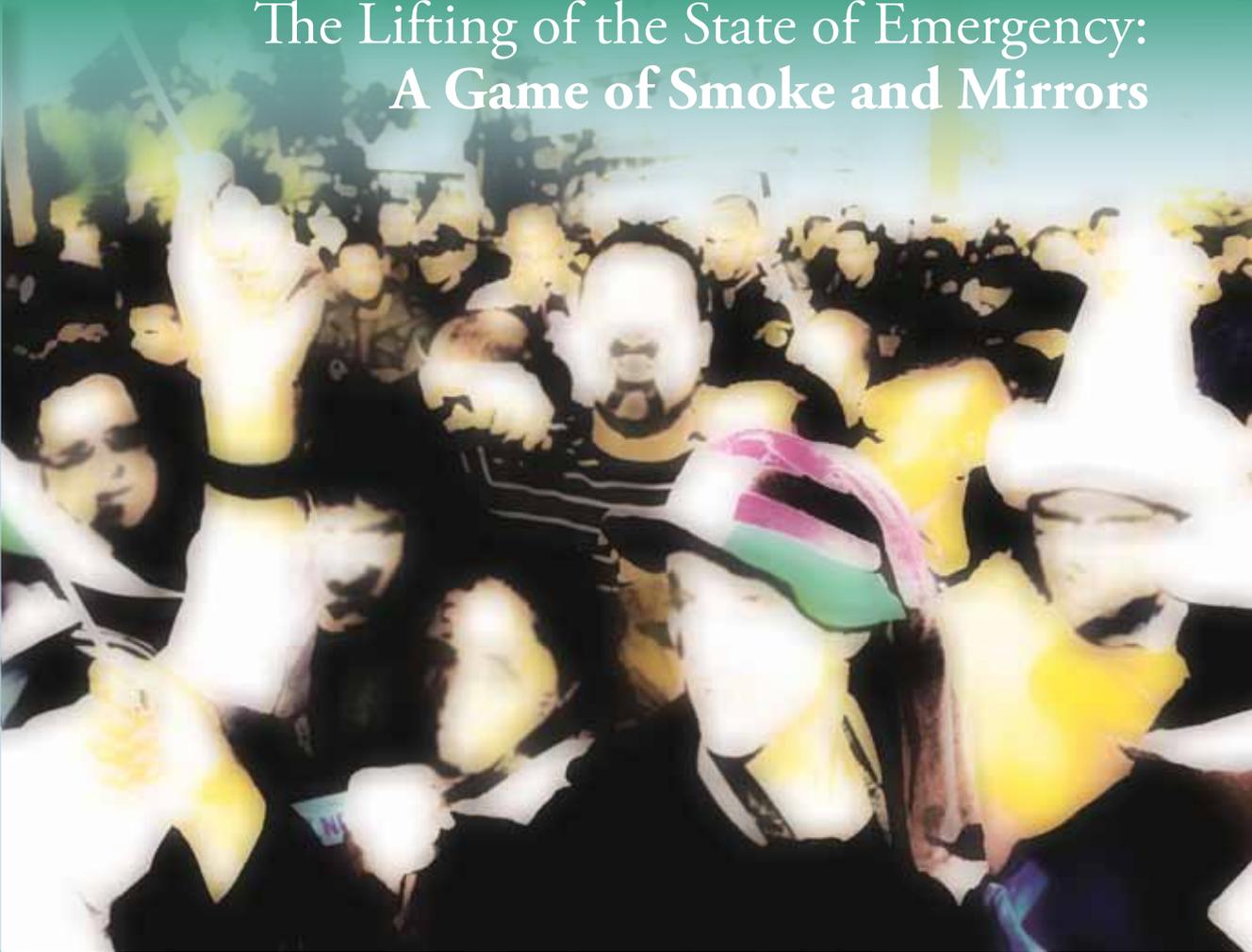




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الشبكة الأوروبية - المتوسطية لحقوق الإنسان

The Lifting of the State of Emergency: A Game of Smoke and Mirrors



2011

The Exercise of the Freedoms of Association, Assembly and Demonstration in Algeria

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On 24 February 2011 the Algerian government lifted the state of emergency in response to the wave of popular protests that was sweeping through the region. To what extent did this bring to an end the long series of human rights abuses that had taken place under the emergency law? Did the decision result in Algerian citizens actually being able to exercise the freedoms of association, assembly and demonstration? If not, what obstacles and what factors continue to impede such exercise?

The state of emergency, declared on 9 February 1992 following the nullification of the results of the first round of legislative elections, which had been won by the Islamic Salvation Front, has had a profound impact on Algerian civil society. Over the next two decades, civil society was systematically weakened as a result of the exceedingly ambiguous wording of certain legal provisions, of the use of anti-terrorist measures to silence anyone who criticised the authorities, and of the impunity enjoyed by those responsible for violating human rights during the civil war.

So far, the lifting of the state of emergency has not led to improved guarantees of basic rights and freedoms. This is especially true for organisations working in the field of human rights and seeking to address the mass abuses that occurred during the civil war. Police harassment of activists, the banning of protests and public meetings without justification and the use of abusive administrative practices to hinder the establishment of associations remain commonly used tactics to undermine civil society and constrain its activities.

In the legislative arena, the new law on information maintains restrictions against freedom of expression, even providing for some infractions to be punishable by prison sentences. The new law on associations is even more restrictive than its predecessor.

Thus, while the lifting of the state of emergency should have been a positive development, it has done little to change the oppressive environment in which civil society operates in Algeria. In both legal and practical terms, civil-society organisations continue to face significant obstacles that hinder their work in promoting respect for human rights and basic human freedoms. Notwithstanding these negative trends, the persistence and strengthening of civil-society organisations could well be the driving force leading to major changes, despite the obstacles they have had to face and continue to face.

Preface and acknowledgments

This study on the status of the right to freedom of association and assembly in Algeria in the wake of the lifting of the state of emergency has been conducted by the Euro-Mediterranean Human Rights Network (EMHRN) in the context of its programme on freedom of association.

The programme focuses on the advances and setbacks recorded with respect to freedom of association, both in law and in practice, in countries of the northern and southern Mediterranean.¹ The monitoring carried out as part of the programme through an annual review of changes in the status of freedom of non-governmental organisations is used as a tool for advocacy and promotion throughout the region, as well as in support of solidarity activities geared towards those organisations and their members who are subjected to a variety of types of pressure, attacks and other rights violations. The annual review of freedom of association in the Euro-Mediterranean region is complemented this year by a new instrument in the form of two reports devoted to subjects that are relevant to freedom of association in two countries of the region. The present report on the impact of the lifting of the state of emergency on freedom of association in Algeria is the second of those two reports.²

The report was drafted by an independent researcher in cooperation with the EMHRN's Working Group on freedom of association, whose membership is made up of representatives of 15 different EMHRN member organisations,³ and augmented by comments from the EMHRN's 80 member organisations, which are active in countries of the northern and southern Mediterranean.

The author of the report conducted the study by reviewing primary documents and the secondary literature (current and projected legislation; reports from EMHRN, human rights organisations and the United Nations; articles and press releases; scientific works, etc.) as well as information gathered from about 20 civil-society actors (association members, union leaders, lawyers, journalists and academics from various regions of Algeria) during the course of a brief mission. EMHRN wishes to thank all of those, both members and non-members of the Network, who contributed to the production of the report, in particular its Algerian members, the Coalition of Families of the Disappeared in Algeria and the Algerian Human Rights League.

1 See the EMHRN website, <http://www.euromedrights.org/fr/>.

2 The EMHRN's first country report deals with the status of freedom of association of Turkish organisations defending the rights of minorities.

3 Collectif des Familles de Disparu(e)s en Algérie (CFDA, Coalition of Families of the Disappeared in Algeria), Algeria; Danish Institute for Human Rights, Denmark; Cairo Institute for Human Rights Studies (CIHRS), Egypt; Ligue des droits de l'Homme (LDH, Human Rights League), France; Intercenter, Italy; Sisterhood Is Global Institute, Jordan; René Moawad Foundation, Lebanon; Solida, Lebanon; Association marocaine des droits humains (AMDH, Moroccan Human Rights Association), Morocco; Organisation marocaine pour les droits de l'Homme (OMDH, Moroccan Human Rights Organisation), Morocco; World Organisation Against Torture (OMCT), Switzerland; Committees for the Defense of Democratic Freedoms and Human Rights in Syria (CDF), Syria; Comité national pour les libertés en Tunisie (CNLT, National Committee for Freedoms in Tunisia), Tunisia; Ligue tunisienne pour les droits de l'Homme (LTDH, Tunisian Human Rights League), Tunisia; Human Rights Association (IHD), Turkey.

CFDA	Collectif des familles des disparu(e)s en Algérie (Coalition of Families of the Disappeared)
CNDC	Coordination nationale pour la démocratie et le changement (National Coordination for Democracy and Change)
CNES	Conseil national économique et social (National Economic and Social Council)
EMHRN	Euro-Mediterranean Human Rights Network
FIDH	International Federation for Human Rights
FIS	Front islamique du salut (Islamic Salvation Front)
LADDH	Ligue algérienne pour la défense des droits de l'Homme (Algerian Human Rights Defence League)
NGO	Non-governmental organisation
RAFD	Rassemblement algérien des femmes démocrates (Algerian Rally of Democratic Women)
RCD	Rassemblement pour la culture et la démocratie (Rally for Culture and Democracy)
SNAPAP	Syndicat national autonome des personnels de l'administration publique (National Independent Union of Public Servants)
UN	United Nations Organisation

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INTRODUCTION



In parallel with insurrections that recently felled or shaken authoritarian regimes that have long been in power in Arab countries, a mass protest movement with roots going back several decades made itself felt again in Algeria in 2011. The demonstrations were organised to demand social justice and respect for civil, political, economic and social rights. In January 2011, a group of non-governmental organisations (NGOs), trade unions and political parties formed a coalition, the National Coordination for Democratic Change (*Coordination nationale pour le changement démocratique*, CNCDD), demanding regime change and an end to the state of emergency.

The state of emergency had been decreed on 9 February 1992, following the nullification of the results of the first round of legislative elections in December 1991, which the Islamic Salvation Front (*Front islamique du salut*, FIS) had won, thus signalling the end of the democratic opening and the beginning of the civil war.

The state of emergency, lasting for 19 years, has left a profound mark on Algerian society and has had a particularly adverse impact on democratic life and the fate of NGOs. The Algerian regime claimed that the security measures were needed to combat terrorism and subversion, but the implementation of these measures, and especially the fact that they were maintained well after the civil war had ended, have led to many abuses and human rights violations.

The state of emergency severely restricted the exercise of freedom of association, assembly and demonstration, as well as freedom of expression, opinion and information, and even the promotion of those rights. The guarantees that the state was supposed to provide to allow for the exercise of freedoms, in particular by ensuring the independence of the judicial system, remained unfulfilled. Civil-society organisations working for the defence and protection of freedoms and human rights paid a heavy price as victims of repression and manipulation.

The disintegration of freedoms was all the more notable in that it followed a brief period during which NGOs displayed a high degree of dynamism, thanks to the establishment of a legal framework which, while imperfect, had allowed greater scope for the enjoyment of freedom of association, expression and demonstration.⁴

The imposition of the state of emergency in Algeria led to protests in the country and to criticisms and condemnations abroad. A number of international and Algerian NGOs published reports and press releases,⁵ and put pressure on public opinion, international bodies and foreign governments to denounce violations of basic freedoms in Algeria.

Finally, given the repercussions generated by the Arab revolts at the national and international levels, the Algerian government issued a decree on 23 February 2011 lifting the state of emergency, and at the same time announced constitutional and legislative reforms, including in areas affecting associations.

Can it be said that the lifting of the state of emergency has resulted in improvements in the exercise of freedom of association, assembly and demonstration in Algeria? This report will show that the answer, unfortunately, is no, and that the changes that have been made are moving in a direction that is contrary to the development of a democratic system of governance.

⁴ The law of 4 December 1990 had given Algerian NGOs a strong impetus. During a brief period, many organisations were able to enter new areas of interest such as sustainable development, identity issues and human rights. The first of these, the Algerian Human Rights Defence League (*Ligue algérienne pour la défense des droits de l'homme*, LADDH), founded on 30 June 1985, was officially recognised in 1990. A second organisation, the Algerian Human Rights League (*Ligue algérienne des droits de l'Homme*), established soon afterward, was recognised without any delay.

During the same period, a number of political parties emerged from the underground or were newly created. Among the more important parties were the Islamic Salvation Front, the Socialist Forces Front (*Front des forces socialistes*), the Rally for Culture and Democracy (*Ralliement pour la culture et la démocratie*, RCD), the Workers' Party (*Parti des travailleurs*), the Socialist Vanguard Party (*Parti d'avant-garde socialiste*, PAGS) and the Democratic and Social Movement (*Mouvement démocratique et social*). The National Liberation Front (*Front de libération nationale*, FLN), which had previously been the only legal party, was now on an equal footing with the others, losing access to the exclusive privileges it had enjoyed in the past.

A large number of newspapers and magazines (close to 170 dailies and periodicals of all political stripes) – including such major publications as *La Nation*, *La Liberté*, *El Watan*, *La Tribune*, *El Khabar* and *Le Matin* – also began to publish at this time, even though some of them had very limited circulation and eventually ceased publication.

⁵ For example, Amnesty International, Human Rights Watch and Reporters Without Borders have published a number of documents and reports devoted to the human rights situation in Algeria; some of these writings were later published in a collective work entitled *Algérie: Le Livre noir* (Paris, La Découverte, 1997); see also Madjid Bencheikh, *Algérie: Un système politique militarisé* (Paris, L'Harmattan, 2003). The International Federation for Human Rights and its Algerian partner organisations, LADDH and CFDA, have published a report entitled *La mal vie: Situation des droits économiques, sociaux et culturels en Algérie*, which was submitted to the United Nations Committee on Economic, Social and Cultural Rights in 2010.

Part 1 outlines the legislative framework that, until this year, guaranteed the rights to freedom of association, assembly and demonstration in Algeria, which was put in place during the democratic opening of 1989-90, as well as the limitations of that framework. In Part 2, we look at the impact of the state of emergency on freedom of association and at the way in which it exacerbated legal inadequacies and gave rise to extensive restrictions of public freedoms.

Part 3 is devoted to an assessment of the status of freedom of association, assembly and demonstration following the repeal of the emergency law, and of the relevance of the reforms already under way or announced by the president of Algeria.

On the basis of these findings, we present recommendations that could lead to greater respect for basic freedoms in Algeria, in particular for freedoms of association, assembly and demonstration.



The Lifting of The State of Emergency: A Game of Smoke and Mirrors

1. BRIEF OVERVIEW AND CRITICAL LOOK AT THE LEGAL FRAMEWORK FOR PUBLIC FREEDOMS ESTABLISHED DURING THE ‘DEMOCRATIC OPENING’ (FEBRUARY 1989–JUNE 1991)

In October 1988, following a series of protests held by young Algerians in Algiers and other major cities throughout the country that were severely repressed by the armed forces,⁶ the Algerian government ended the single-party regime, with its mass organisations, and gave explicit recognition to basic rights and freedoms. In the following years, major political reforms were implemented: recognition of multi-party democracy, recognition of the diversity of civil society and the autonomy of labour unions, affirmation of the independence of the judiciary and the media, etc.

This ‘democratic opening’ represented a clear break with previous legislation regarding public freedoms, in particular freedom of association, and was a real breakthrough by entrenching procedures that were more flexible and thus more favourable to a diversity of opinions. It encouraged a large number of NGOs to emerge in a variety of areas and to promote the principle of citizenship.

Articles 39 and 40 of the revised Algerian Constitution, which was approved on 23 February 1989, guaranteed the right to freedom of association as the cornerstone of the protection of basic rights and freedoms: ‘The right to create associations is guaranteed; the state encourages the development of the associative movement. The conditions and rules governing the formation of associations are prescribed by law.... Citizens’ freedoms of expression, association and assembly are guaranteed’. For the first time since the independence of Algeria, the Constitution recognised pluralism for political parties (article 40) and labour unions (article 53).

⁶ According to official sources, these crackdowns had resulted in approximately 500 fatalities, hundreds of arrests and numerous cases of torture and enforced disappearances.

Several laws were enacted to give concrete form to these new constitutional directions, based on international standards in this area:

- Law 90-31 of 4 December 1990 on the formation of associations confirmed the constitutional recognition of freedom of association and described how that principle should be implemented. The law provided for a 'declarative' system for the creation of an association, whereby the association submits a simple declaration of its existence to the local authority (wilaya), for local groups, or to the Interior Ministry, for national organisations. Within 60 days of receiving the registration papers, the authorities were then to send the association a document acknowledging the receipt of its registration. If no acknowledgment was sent by then, the association was deemed to have been registered in compliance with the law.
- Law 89-28 of 31 December 1989, which governed the right to freedom of assembly and demonstration, was consistent with article 21 of the International Covenant on Civil and Political Rights on the right of peaceful assembly (however, this law was soon made more restrictive in 1991).
- Law 89-11 of 5 July 1989 and Law 90-14 of 2 June 1990 set out the details governing the rights of 'associations of a political nature' and the rights of trade unions.
- Law 90-07 of 3 April 1990 on the right to information recognised freedom of opinion, expression and information. It led to the development of independent and party-related media on the same

footing as government media, and to the establishment of the Higher Council of Information, confirming the independence of journalists.

- Article 138 of the 1989 Constitution affirmed the independence of the judiciary and guaranteed the right of individuals to launch court proceedings. The Code of the Magistracy adopted on 12 December 1989 entrenched that independence by creating the Council of the Magistracy and guaranteeing that judges could carry out their duties without interference by the political authorities and without incurring the risk of being transferred, punished or fired.

At the same time, the Algerian government in this period of democratic opening ratified a number of international and regional legal instruments dealing with human rights (see Annex 2). The 1989 Constitution stipulated in article 123 that 'the treaties ratified by the president of the republic in accordance with the provisions defined in the Constitution have precedence over the law'. The precedence of international conventions over domestic laws was reaffirmed in a decision made by the Constitutional Council on 20 August 1989 when it stated that 'once a convention has been ratified and its text has been published, it becomes part of domestic law and, in accordance with article 123 of the Constitution, takes precedence over law, giving all Algerian citizens the right to invoke its provisions in front of a tribunal'.⁷

As mentioned in the EMHRN's report on the independence and impartiality of judges in Algeria, however, 'the international

⁷ This provision was retained in article 132 of the 1996 Constitution.

human rights conventions ratified are not always published in the official journal. More precisely, the decree of ratification is not always followed by publication of the text of the ratified convention, or of any reservations or declarations expressed'.⁸ These failures, coupled with the lack of training of judges and lawyers with respect to international human rights law, are responsible for their lack of knowledge of the provisions of the conventions and cast doubt on the stated precedence of the latter over domestic law.

Moreover, the legislative advances mentioned above were offset by the ambiguous language of some provisions and by the failure to apply them in practice. Although Law 90-31 initiated a declarative system for the registration of associations, it gave the state the authority to take legal means (by launching proceedings in the appropriate regional administrative tribunal) to deny legal status to an association if its goals were deemed to be contrary to the 'established institutional system', 'law and order' or 'public morality' – concepts that are very vague and open the door to a broad area of discretionary interpretation by the authorities.

Article 45 of Law 90-31 also provides that anyone who leads, administers or plays an active role in an association that has been denied registration, suspended or dissolved will be subject to either a sentence of imprisonment of between three months and two years or a fine of between 50,000 and 100,000 Algerian dinars, or to both sanctions. This article of the law is based on the notion of 'approval' of

⁸ Madjid Benchikh and Amine Sidhoum, *Algeria: The Independence and Impartiality of the Judiciary*. Copenhagen: Euro-Mediterranean Human Rights Network, October 2011, p. 12.

an association, which is contrary to the principle of the declarative system and thus creates confusion around the nature of the acknowledgment, which is now seen as a decision authorising an association to begin its activities rather than a simple document acknowledging the receipt of its registration papers.⁹ At the same time, as we shall see in the second part of this report, the authorities have used the non-delivery of the acknowledgment as a tactic to prevent some NGOs from pursuing their activities.

In addition, the law requires associations to provide the names of a large number of founding members as well as documentary evidence not only on these individuals but also on the association itself, whereas in most other countries the names of only two founding members are needed and the number of required documents is much smaller. Moreover, the law requires an association to obtain prior approval from the Interior Ministry before it can receive funding assistance from outside sources.

With respect to freedom of opinion, expression and information, Law 90-07 on the organisation of information benefited the printed media exclusively, even though there were no legal impediments excluding other media such as television and radio, which would be major resources for civil-society actors wishing to reach a broad audience.

And finally, as we shall see presently, the gains recorded in the early 1990s were soon lost during the 'black decade' of the civil war and the long years of the state of emergency, which were marked by egregious human rights violations.

⁹ See the EMHRN's annual reports on freedom of association in the Euro-Mediterranean region for 2009 and 2010.

2. THE IMPACT OF THE STATE OF EMERGENCY ON THE ENJOYMENT OF FREEDOM OF ASSOCIATION, ASSEMBLY AND DEMONSTRATION (JUNE 1991–FEBRUARY 2011)

2.1. The state of emergency and the use of abusive administrative practices that undermine the right to form associations

Presidential Decree 92-44 of 9 of February 1992, which proclaimed the state of emergency, made it possible, among other things, to circumvent the monopoly on dissolving associations enjoyed by the courts under the legislation in place. The decree gave the Interior Minister the authority to suspend or ban, by administrative decision, any association whose activities were deemed to ‘undermine law and order, the security of the state, the normal operation of institutions or the higher interests of the nation’. The vague wording of this provision allowed the government to ban a number of associations with close links to the FIS. These decisions were made outside of any independent judicial controls and without prior notification being given to the organisations concerned, thus depriving them of any possibility of appeal.

The equally vague wording of article 7 of Law 90-31, which gives the government the authority to oppose the establishment of an association by judicial decision, has also led to abuses. This provision states that an association whose ‘declaration’ is being considered must not be ‘based on goals that are contrary to the established institutional system, law and order, public morality or the laws and regulations in place’. The authorities in charge have thus been in a position to exert various types of pressure on NGOs under the guise of a ‘test to determine the degree of compliance with the law’.

These pressures sometimes take the form of questioning individually each founding member of an NGO, even though, legally, only the association’s president, secretary and treasurer need be involved. These individual summons to police stations have a strongly dissuasive effect.

There have also been instances where the authorities have interfered in the internal affairs of organisations in an attempt to convince them to change their goals or their bylaws when certain elements are deemed objectionable. Some of these tactics have gone very far; there are even cases in which associations of victims of terrorism were forced to incorporate provisions of the legislation on amnesty and national reconciliation into their bylaws.

In addition, the authorities have forced certain NGOs to accept conditions that are not provided for in the legislation. For example, the regional office of the ministry or agency regulating the field in which a would-be association would conduct its activities is required to express an opinion on the association's application. The association must also produce documentary proof, certified by a bailiff's order, that it is housed on the ground floor of a building in a space that is large enough to receive its 15 founding members – a requirement that is not in the law.

And finally, local groups are under strong pressure to avoid holding activities or providing information outside their wilaya, which is a violation of the right to inform and to be informed, and of the right to freedom of movement. For example, the application submitted by Djazaïrouna, an organisation of families of the victims of terrorism, was rejected by Blida wilaya because its bylaws provided for activities to be conducted at the national and international levels.

The main obstacle to the normal establishment of an NGO is the failure of the authorities to deliver the official document acknowledging that its registration papers have been received. These acknowledgments are forwarded on a case-by-case basis,

depending on instructions from the hierarchy. Contrary to the provisions of the law, the authorities never submit cases to a tribunal (except in cases of dissolution, where judges generally dismiss the government's claims), and they sometimes delay delivery of the acknowledgment indefinitely. When a denial of recognition is not officially notified to the association, the latter has no remedy at its disposal.

In addition, despite article 8 of the law – which establishes the 'declarative' procedure and stipulates that, unless the relevant government body explicitly objects to the creation of an association within 60 days of receiving its registration papers, the association is deemed to be legally constituted – the association must produce this document in all its contacts made for various administrative purposes (opening a bank account, receiving funds, launching legal proceedings, etc.). As a result, the association that has not received the official acknowledgment has no legal status. In some cases, the registration documents are simply refused. This is what happened to many women's organisations such as Therwa and RAFD (*Rassemblement algérien des femmes démocrates*), as well as the feminist coalition. SOS Disparus has met with a similar fate: the group has requested an opportunity to submit its application many times since 2003 but has systematically been denied.

It is important to point out that the NGOs subjected to these arbitrary practices are, in the majority of cases, those working in areas that the government deems 'sensitive', such as human rights in general, gender equality, violence against women, and the struggle for truth and justice in cases of enforced disappearances or on behalf of the victims of terrorism during the civil war of the 1990s. Among NGOs that have borne the full

brunt of this arbitrariness are associations of victims of terrorism in several wilayas as well as other activist organisations such as RAFD, Therwa, CFDA, SOS Disparus, Somoud and LADDH. The group Djazaïrouna was deprived of its status by bureaucratic fiat six months after having submitted its application and four months after receiving the document officially acknowledging its existence.

Independent trade unions, which under Law 90-14 of 1990 must obtain prior authorisation by the Labour Ministry before they can be officially created, must often deal with refusals or delaying tactics by the ministry. And while 58 independent unions have been created since 1990, the authorities have refused to respond to repeated requests to form a broad trade union confederation.

2.2. Curtailment and close monitoring of the freedoms of demonstration, assembly, opinion and information

Decree 91-196 of 5 June 1991, which introduced the state of siege in Algeria, contained provisions banning 'publications, meetings and public gatherings deemed capable of provoking or maintaining disorder and insecurity' (art. 7), 'the movement or gathering of people in public roadways or in public places' as well as 'strikes likely to hinder the restoration of law and order or the normal operation of public services' (art. 8).¹⁰

Several laws and decrees were put in place to add to this repressive system:

- Law 91-19 of 1991 stipulated that an application for prior authorisation to

¹⁰ The state of siege was lifted on 29 September 1991.

hold a meeting or demonstration must be submitted to regulatory authorities eight days before the event, whereas the previous legislation on demonstrations and public meetings (Law 89-28 of 31 December 1989) provided only for notification of the local governor (*wali*) five days before the event.

- Under article 19 of Law 91-19, any demonstration taking place without authorisation was deemed to be an illegal gathering, and organisers and participants could face sentences of three months to one year in jail and fines ranging from 3,000 to 15,000 Algerian dinars. Similar sanctions awaited those who violated article 9, which stated that in a meeting or demonstration, any opposition to the national values or any attack against symbols of the Revolution of 1st November, law and order, or public morality was prohibited.

- Decree 92-44, which established the state of emergency in 1992, authorised the Interior Minister and the local governor to force the temporary closure of and public space used for gatherings and to ban any gathering or demonstration likely to disturb law and order.

- A decision announced by the prime minister on 18 June 2001 banned all demonstrations in Algiers.¹¹

In practice, requests for permission to hold a demonstration are generally denied, the decision is announced very late and no explanation is provided about the reasons for the refusal. When organisers ignore the

¹¹ This decision was made in the wake of a large protest march against impunity held in Algiers on 14 June 2001, which had been violently suppressed by police.

refusal and hold their event anyway, the protest is often brutally repressed and the organisers are prosecuted.

With regard to the right of assembly, article 2 of Law 91-19 states that gatherings must take place 'away from public streets in a closed space'. In addition, article 5 states that the notification of a public meeting must be made only to the *wali*, under the direct control of the Interior Ministry. In most cases, the decision is announced too late and no explanation is given for refusals.

As a result, many public debates, meetings and training seminars have been blocked. Examples include a training seminar for journalists organised by LADDH in May 2009, and a workshop-forum on the subject of remembering victims in rebuilding society, organised on 16 July 2009 by several associations of families of the disappeared and victims of terrorism, including Djazaïrouna, Somoud, CFDA and SOS Disparus. The wali of Algiers had prohibited the meeting without providing a written notification, and a Moroccan human rights activist, Mohammed Errahoui, who had formerly been a 'disappeared person' in Morocco, who was to take part in the workshop, was stopped at the airport and sent back without any explanation.

A study session organised in 2010 by a group of 16 women's organisations was banned.

Peaceful demonstrations have been banned or forced to disperse, as occurred in 2010 with an Amazigh march held to commemorate the 30th anniversary of the 'Berber spring' and a rally held in May 2010 in front of the state television headquarters in favour of press freedom. The demonstrations held every week by

mothers of the disappeared have often been blocked by a strong police presence and participants have been roughed up, as in April and November 2009, and during the summer of 2010.

In May 2010, the Algiers wilaya ordered the closure of the trade union centre (*Maison des Syndicats*), one of the last meeting venues still available, which is managed by SNAPAP, the National Independent Union of Public Servants, claiming that it was being used for unauthorised meetings.

Human rights defenders, union leaders and political activists have also been targeted by bureaucratic and judicial harassment. Several of them have been convicted on appeal for their involvement in protest marches or have been pressured and threatened in their work.¹²

The activities of some foreign organisations have also been curtailed, as in the case of the Friedrich Ebert Foundation, which has had to reduce its meetings with NGO and trade union leaders. Activists and representatives of foreign human rights NGOs seeking to conduct missions in Algeria or attend meetings are regularly denied entry into the country. Examples include the EMHRN's executive director, in July and September 2009, and the Tunisian journalist and activist Sihem Bensedrine, also in 2009.

Steps were also taken to restrict freedom of expression, opinion and information. Articles 144 to 148 of the Criminal Code were amended in 2000, making it a crime to commit libel against the president of the republic, state institutions and the judicial system, and providing for the imprisonment

¹² See the chapters on Algeria in the EMHRN's annual reports on freedom of association in the Euro-Mediterranean region for 2009 and 2010.

of journalists. More recently, in August 2009, in response to the growing use of the internet by Algerians wishing to access information, Parliament adopted Law 04-09, which seeks to control that access.

2.3 Associations and civil-society organisations during and after the civil war: impact of the conflict, the state of emergency and the national reconciliation policy

Non-governmental organisations were hit hard by the civil war and the two-decade-long state of emergency. Associations linked to the FIS were dissolved. Secular organisations established in 1989 and 1990 were sharply divided: some were ready to accept the electoral process of 1991-92 and the results of the vote (in which the FIS was the victor), while the majority feared the arrival of an Islamist regime and supported the ending of that process.¹³ This breach was deepened in the context of the fight against the armed Islamist groups, between those who advocated the eradication of these groups and those who pleaded for reconciliation.

These divergences were carefully nurtured by the Algerian government during the civil war and in the post-conflict era.

This has been particularly true in the case of the organisations set up in the mid-1990s to demand that the truth be revealed about the fate of the victims of the civil war and that justice be served. Some associations of families of the victims of terrorism were

established or exploited by the government,¹⁴ while families of the disappeared (victims of enforced disappearances perpetrated by the regime's armed forces or paramilitaries) were characterised as 'families of terrorists', thus feeding divisions that were not conducive to an impartial search for truth and justice.

Under such pressures, a number of NGOs began to disintegrate – the fate that awaited the Coordinating Committee of Academics for Democracy (*Coordination des universitaires pour la démocratie*), which was founded in the late 1980s, and the Committee against Torture (*Comité contre la torture*), which had denounced the abuses committed by the security forces during protests. The women's rights movement, which was particularly concerned about the Islamist threat, was also deeply impacted by these divisions. Associations, lawyers and journalists denouncing human rights violations and the suspension of freedoms were the targets of harsh repressive measures, and few militants were able to pursue their activities in the NGO movement on an ongoing basis.

Paradoxically, the national reconciliation process caused a number of associations to join in rejecting the mechanisms put in place to advance that process and gave rise to renewed pressures on the organisations seeking to throw light on the crimes perpetrated during the civil war.

The amnesty granted under the 1995 law on clemency (*Rahma*) and the 1999 law on civil harmony, along with the adoption of the Charter for Peace and National Reconciliation (*Charte pour la paix et la réconciliation nationale*) in a referendum in

¹³ One example among many is that of the National Committee for the Protection of Algeria (*Comité national pour la sauvegarde de l'Algérie*), founded on 30 December 1991 under the aegis of the General Union of Algerian Workers (*Union générale des travailleurs algériens*) and a few parties and associations.

¹⁴ As an example, the first national association of victims of terrorism was established as an initiative of the Solidarity Ministry.

2005 and of its implementing regulations in 2006, conferred total impunity to those who were responsible for human rights violations, whether they were members of armed Islamist groups or the state security forces. These amnesty measures were vigorously denounced by many NGOs fighting against impunity (families of the victims of terrorism and of paramilitary groups, and families of the disappeared). The amnesty provisions were contrary to the Constitution of Algeria and to the international treaties Algeria had ratified, which state that crimes against humanity are not subject to statutes of limitation, to amnesty or to the exclusion of public action.¹⁵

As mentioned previously, NGOs that pursue their activities in search of truth and justice on the civil-war era have faced harassment and repression. In addition, they have seen their task made almost impossible by the presidential amnesty granted in 2000 to FIS members¹⁶ and by the implementing legislation of the Charter for Peace and National Reconciliation. These measures forbid prosecutors from entertaining complaints filed against an official of the state and allow compensation to be paid only upon the claimant obtaining a death certificate for the disappeared person from a family court judge, without any comprehensive, impartial investigation being conducted on the fate of the victim.

In addition, NGOs fighting against impunity and working in the area of enforced disappearances in Algeria face severe threats under article 46 of the 27 February 2006 order implementing the

Charter. In particular, they face possible fines of between 250,000 and 500,000 Algerian dinars and prison sentences of between three and five years if, in statements, writings or other forms, they use or exploit 'the wounds of the national tragedy to attack the institutions of the People's Democratic Republic of Algeria, weaken the state, harm the honourable character of its agents who have served the Republic in dignity, or tarnish the image of Algeria in the international arena'.

As a result of all this, all the joint activities held since 2006 by CFDA, SOS Disparus, Djazaïrouna, the National Association of Families of the Disappeared and Somoud have been banned, including the first seminar devoted to the search for truth, peace and reconciliation, organised in 2007.

The state of emergency was in place for nearly 20 years, and steps to limit the public freedoms of association, assembly and expression on this issue were used to block NGO activities seen as 'undesirable' because they were too critical of the regime in power, well after the civil war had ended.

¹⁵ LADDH press release, Algiers, 7 March 2006.

¹⁶ As part of the 10 January 2000 presidential decree implementing Law 99-08 of 13 July 1999 on the restoration of civil harmony.

3. REPEALING THE STATE OF EMERGENCY: A GAME OF SMOKE AND MIRRORS

The state of emergency was lifted by Order 11-01 of 23 February 2011, which rescinded legislative Decree 93-02 of 6 February 1993, extending the duration of the state of emergency declared in 1992. Although the measure has been in effect since 24 February 2011, the removal of the state of emergency has not resulted in the restoration of the enjoyment of freedom of association and the freedom to demonstrate, and its impact has been reduced by legislative reforms that are antithetical to the spirit of democratic opening and contrary to the provisions of international treaties.

3.1. The reality: freedoms are still restricted, associations still face obstacles in their activities

Since it has lifted the state of emergency, the Algerian government has continued to raise many obstacles to the establishment and normal operation of civil-society associations and organisations, and to crack down, sometimes violently, on some activities.

- **Refusal to register associations and trade unions**

Delays in acknowledging the receipt of an NGO's application to register, or the outright refusal to deliver the acknowledgment, remain a common practice, and in fact the situation even worsened in 2011 during the drafting of the new law on associations and subsequent to its adoption (see below). As seen in chapter 1, this acknowledgment is, to all intents and

purposes, equivalent to a prior authorisation.¹⁷ For an association, the inability to secure this document means that it must operate outside the law. Human rights associations have been a prime target of these arbitrary and unwarranted denials of registration. For example, SOS Disparus requested an opportunity to submit a new registration application after the state of emergency was lifted and before the new associations law was passed, but the organisation still has not been granted an appointment under the pretext that it first had to secure an approved community hall to hold its constituent assembly – a requirement that is not mentioned in the legislation. All types of NGOs can be the targets of these practices: registration has been denied to community organisations as well as national scientific organisations such as the Soil Mechanics Association (*Association des mécaniques des sols*) and AIESEC.

The establishment of independent labour unions remains subject to the prior authorisation of the Labour Ministry under Law 90-14 of 1990. Even after the state of emergency was lifted and trade unions began to appear in various sectors, the authorities refused to allow the official creation of at least five new unions. For example, the application submitted by the national independent union of the employees of the Algerian Bank for Agriculture and Rural Development (*Banque algérienne de l'agriculture et du développement rural*)

¹⁷ As noted by a researcher and professor at the University of Tizi-Ouzou, 'it is very revealing that the word "approval" and the expression "approved association" are used systematically, even when referring to local associations. The use of these words indicates very clearly that the procedure is, in fact, seen as one of approval. That is one of the consequences of the hybrid nature of the system in place for the establishment of associations'; Mohammed Brahim Salhi, *Algérie: Citoyenneté et identité* (Tizi-Ouzou: Editions Achab, 2010), p. 286.

on 28 March 2011 – one month after the state of emergency was lifted – has been denied by the Labour Ministry, with no explanation being given. The National Union of Professional Training Workers (*Syndicat national des travailleurs de la formation professionnelle*), which has been seeking official recognition since 2002, was denied again in April 2011, despite the interventions of the International Labour Organization's Committee of Freedom of Association.

- **Obstacles to the exercise of freedom of assembly and demonstration**

Human rights NGOs have had some of their meetings banned without explanation. For example, the government banned two events organised by LADDH – a conference on the occasion of the International Day of the Child that was to take place on 1 June 2011 at El Taref, and another conference, to be held in Algiers on 10 June 2011 on the subject of corruption and the dynamics of change in the Arab world, which delegates from Morocco, Tunisia and Egypt had been invited to attend. LADDH was also prevented from holding a conference that was to take place in an Algiers hotel on 10 December 2011 to celebrate International Human Rights Day, as well as another scheduled to take place in Boumerdès on the 12th of that month. It is appropriate to note that under Law 91-19, which is still in force, the wali may ban a public meeting 'if it is deemed to present a real risk of public disturbance or if the actual purpose of the meeting appears to present a risk for the preservation of law and order'.

When organisers defy the ban and decide to hold their meeting or demonstration anyway, they are often brutally cut short.

These crackdowns are such that, during a recent one-week visit to Algeria, Frank La Rue, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, urged the authorities to avoid using force against peaceful demonstrators.¹⁸

Despite the repeal of the state of emergency, the ban against demonstrations in Algiers remains in place.

A demonstration organised by the National Committee for the Defence of the Rights of the Unemployed (*Comité national pour la défense des droits des chômeurs*, CNDDC) on 2 October 2011 was blocked, with some participants being arrested before they even reached Algiers while others were detained at the venue where the event was to take place. In all, 32 people were detained, most of them being released shortly afterward.

Security forces also cracked down on a student demonstration held on 8 May 2011, during which the CNDDC spokesperson, Tahar Belabes, who had joined the participants to express his support, was severely beaten, as well as on a rally held by the Coalition of Families of the Disappeared on 8 October 2011. Other meetings and demonstrations are tolerated but are the target of heavy disruptions by security forces, such as for example the demonstration held by the members of the bar association in Algiers on 29 June 2011. Similarly, the two public meetings organised on the occasion of International Women's Day on 8 March 2011 – one by SOS Disparus and the other by Djazaïrouna – were also repressed. The police ripped

portraits of disappeared relatives and lists of women who had been murdered from the hands of the women taking part in those events.

Police led a violent attack against resident physicians who were staging a peaceful demonstration on 1 June 2001 at the Place du 1^{er}-Mai in Algiers, and against a peaceful march by citizens who were demanding that their housing status be regularised by the Agency for Housing Improvement and Development (Agence d'amélioration et de développement du logement).

In theory, the 2001 decision banning demonstrations does not apply outside Algiers, but in reality, most marches are subjected to violent crackdowns throughout the country. On 1 June 2011, at Hassi Messaoud (located in Ouargla wilaya, more than 800 km south of Algiers), a police crackdown injured five demonstrators among unemployed workers who were staging a hunger strike in front of the *daira* headquarters to demand the right to work in this oil-producing region. Another peaceful demonstration held by CNDDC in Laghouat on 16 October was brutally repressed by police. Many young people were beaten and then arrested, five of them sustaining severe injuries.

- **Harassment and prosecution of activists**

Pressures and intimidation continue to be exerted against NGOs, and the leaders of independent labour unions continue to be the targets of harassment by police and are sometimes prosecuted for taking part in demonstrations and exercising

¹⁸ Press release of 17 April 2011
<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10946&LangID=E>

their union rights.¹⁹ Tahar Belabes, the spokesperson for CNDCC, was arrested on 18 September and questioned about his union activities and his alleged links with a secret organisation, and then released. On 25 September, an officer of the internal security services (*Renseignements généraux*) called at the home of the owners of the building housing the *Maison des Syndicats* in Dar El Beïda, east of Algiers, where the National Independent Union of Public Servants (*Syndicat national autonome des personnels de l'administration publique*, SNAPAP) has its headquarters, in order to evict the union from its offices. The officer insulted union activists, accused SNAPAP of maintaining relations with foreign entities that provide it with illegal funding, and made death threats against its president, Rachid Malaoui. The same day, Mourad Tchiko, another member of SNAPAP, was summoned to the Hadjout police station in Tipaza wilaya, west of Algiers, where he was questioned about his union activities.

On 20 September, Malika Fallil, president of the National Committee of Background Check and Social Net Workers (*Comité national des travailleurs du pré-emploi et filet social – travail précaire*) was arrested during a sit-in held in front of the Labour Ministry. The police set out to intimidate her in an attempt to put an end to her activism, then released her a few hours later.

In 2011, the authorities also intensified their pressure on families of the disappeared in an effort to compel them to accept compensation in exchange for death certificates for their relatives to be issued without any investigation or any attempt to

seek the truth and identify those responsible for these cases of enforced disappearances.²⁰

And finally, despite statements made by the president of Algeria in February, legal proceedings against hundreds of peaceful protesters arrested in January and February 2011 moving forward. Among them is Omar Farouk Slimani, a student and member of the executive of the Laghouat chapter of LADDH, who, along with 20 other young people, was arrested on 7 January 2011 following large demonstrations held by young activists to protest against corruption in the government and the lack of civil and political freedoms. Slimani was kept in detention for 48 hours before being brought before a judge. During his detention, he was questioned about his political views, his activities as a human rights defender and the operation of the local human rights defence organisation. He was charged with 'holding an unarmed gathering' and 'violent aggression against law enforcement officers' under articles 98 and 148 of the Penal Code – offences that are punishable by mandatory sentences of five years. The court in Laghouat acquitted him on 18 October 2011 but the prosecutor has appealed that decision.

Similarly, Yacine Zaïd, a union activist and president of the Laghouat branch of LADDH, who was fired by his employer after having set up a union local in Hassi Messaoud (in the south of the country) where he was working, is being prosecuted for 'slander and uttering threats on the internet' although no solid evidence has

19 See the press release of 1 September 2011 by EMHRN, OBS, CFDA and LADDH: <http://www.euromedrights.org/en/news-en/emhrn-releases/emhrn-statements-2011/10398.html>.

20 See the press release of 25 July 2011 by CFDA: http://www.algerie-disparus.org/cfda1/images/pdf/cp_harcelement_26072011.pdf. See also REMDH, CFDA, LADDH and SNAPAP, 'Note sur la situation des droits de l'Homme en Algérie', 30 August 2011: http://www.algerie-disparus.org/cfda1/images/pdf/briefing_ue_30082011.pdf.

been brought to support that accusation. Abusive prosecutions are still ongoing against independent activists of SNAPAP who had called for a strike or for the establishment of union locals. One example is Mohamed Hadji, who was fired from his job at the Chlef commune administration, which still refuses to obey the court order demanding that he be reinstated; another is Sadou Sadek, an employee of Béjaïa wilaya, who has been prosecuted in six cases since 2007 for 'slander and usurpation of the status of union member'. Mourad Tchiko, also a SNAPAP member, has been the target of judicial harassment since 2004 and has been deprived of a valid passport since August 2010, a step designed to punish him for his union activities.

3.2. The lifting of the state of emergency and political reforms

The international community welcomed the repeal of the state of emergency, with the European Union noting that 'these ambitious reforms include in particular the reform of the Constitution and revisions to the legislation on elections, political parties, the involvement of women in politics, associations and the media'.²¹

At the beginning of 2011, the Algerian government made a pretence of putting in place liberalising measures. Between May and July, consultations were held with NGOs and labour representatives with a view to developing legislative proposals that would be submitted to Parliament at its autumn 2011 session. These proposals would deal with revisions to the Constitution, to the Elections Code and the legislation on political parties, as well as the

modernisation of the code of the wilayas, women's representation in elected bodies, and revisions to the associations law, the Criminal Code and the Information Code.

'Estates-general of civil society' held in June 2011 under the auspices of the National Economic and Social Council (*Conseil national économique et social*, CNES) were attended by more than 1,000 participants, and a report and recommendations were submitted to the country's president. The estates-general concluded with the creation of a national observatory of associations and the drafting of a 'charter of civil society' endorsing the universal principles enshrined in international law and defining civil society as 'a constituent component of the nation and a focal point for the promotion of democracy and citizenship, of which it is the foundational element'.

However, these consultations with civil society were incomplete and unbalanced. Few independent unions were invited to take part in the estates-general and the association of families of the disappeared and Somoud were also not invited. Other independent actors, aware of the unspoken subtext behind the official rhetoric, decided to boycott these discussions, justifying their refusal on 'the contradiction of this process with the reality on the ground, which is marked by daily occurrences of human rights abuses and repeated attacks against the freedoms of associations and unions'.²²

At the same time, a number of measures that have remained in place and new legislative changes also contradict the 'democratic opening' rhetoric.

²¹ Final declaration by the EU spokesperson, following the 6th meeting of the EU-Algeria Association Council in Luxembourg, 19-20 June 2011.

²² Press release published on 13 June 2011 by LADDH, SNAPAP, RAJ, the association Tharwa n'Fadhma n'Soumer, SOS Disparus and the Independent Union of Education and Training Professionals (*Syndicat autonome de l'éducation et de la formation*).

Changes to the Elections Code (Organic Law 12-01) and the legislation on the representation of women in elected bodies (Organic Law 12-03) were enacted in January 2012.

Amendments to the legislation on the media (Law 11-14 of 2 August 2011) have rescinded article 144 *bis-1* of the Criminal Code, which provided for imprisonment for anyone found guilty of insulting the president of the republic. At the same time, however, article 97 of the Information Code, which remains in effect, allows journalists found guilty of insulting the head of the state to be thrown in jail. The crime of slander, which is defined very broadly, remains in articles 296 and 298 of the Criminal Code, and Algerian journalists may be charged under these provisions.²³

The new Organic Law 12-05 on information, enacted in January 2012, contains provisions prohibiting slander, attacks against national sovereignty and unity, and attacks against the nation's history. That last restriction is already part of the Charter for Peace and National Reconciliation, which prohibits the search for truth and justice with regard to crimes

committed during the civil war.²⁴

No steps have been taken or debated to improve the enjoyment of public freedoms, in particular the right to protest or to assemble in a public place. On the contrary, these activities remain prohibited by law in Algiers, and in practice everywhere else in the country.

In fact, the new legislation on associations enacted by the president of Algeria on 12 January 2012 contains numerous provisions aimed at restricting freedoms and is likely to make it even more difficult to enjoy the right to freedom of association. This legislation does not reflect in any way the demands made by civil society during the consultations held by CNES in 2011.

In the new law, the creation of an association now requires prior approval by the authorities instead of relying on the simple notification system. The number of founding members required has been increased substantially – to 10 members for a local-level association, 15 members for a wilaya-level organisation, and 25 members for a national-level NGO (originating from at least 12 wilayas, in this case).

As for the suspension or dissolution of an association, a simple bureaucratic decision is now enough to suspend the activities of an organisation deemed to have broken the law. The wording of some of the relevant provisions is ambiguous and allows improper interpretations by the authorities. On the subject of NGO financing, the government increases its control over

²³ Article 296 stipulates that 'any allegation or attribution of a fact that tarnishes the honour or reputation of persons or the body to which the fact is attributed constitutes slander. The direct publication or restatement of such allegation or attribution is punishable even if it is expressed in the form of speculation or refers to a person or a body that remains unnamed but whose identification is made possible by words of the incriminating speeches, screams, threats, writings, printed matter or posters'. Article 198 provides that any act of slander committed against individuals is to be punished by a prison sentence of two to six months, and a fine of 25,000 to 50,000 Algerian dinars.

²⁴ The Charter states that 'no one, in Algeria or abroad, is allowed to use or exploit the wounds of the national tragedy to jeopardise the institutions of the People's Democratic Republic of Algeria, weaken the state, impugn the honour of all its agents who served it with dignity or tarnish the image of Algeria on the international stage'.

funding sources, especially from abroad, by prohibiting any financing arrangement outside official cooperation channels and requiring the prior approval of the authorities.

Membership of Algerian organisations in international NGOs or networks must first be notified to the Interior Ministry, who will then request the opinion of the Foreign Ministry and may oppose such a move within 60 days of being notified.

The status of foreign NGOs in Algeria will become more restrictive because they will now be subject to different regulations than those governing Algerian associations.

The authorities have 90 days to accept or deny a foreign organisation. Their approval is contingent upon a cooperation agreement being signed between the Algerian government and the government of the country of origin of the organisation. The law also states that 'the agreement may be suspended or withdrawn if the [foreign] association interferes clearly in the affairs of the host country or conducts activities that could undermine national sovereignty, the established institutional order, national unity or the integrity of the national territory, law and order, public morality, or the civilisational values of the Algerian people'.

From a practical point of view, members of international NGOs continue to face challenges in gaining access to the country because of the hurdles they must overcome to obtain entry visas, making cooperation between Algerian and foreign NGOs even

more difficult.²⁵

Thus, all things considered, the repeal of the emergency law has not led to a significant restoration of public freedoms. In fact, quite the contrary has happened. Not only does the system of repressive laws remain largely in place, but arbitrary practices by the bureaucracy and the judicial system continue to impose considerable restrictions on freedoms of association, assembly, demonstration and expression.

The impunity enjoyed by those who are responsible for egregious human rights violations has not been challenged, and in the end, the 'reforms' undertaken in response to the Arab Spring and to the mass social protests that shook Algeria in 2011 have only reinforced the lack of public freedoms and democratic governance in the country.

²⁵ See EMHRN, LADDH and CFDA, 'Memorandum: Assessment of Law 12-06 on associations', updated version January 2012, in Annex 3 of this report. See also EMHRN, LADDH and CFDA, 'Algeria: Adoption of a repressive associations law', press release, 20 December 2011.



CONCLUSION

The government's decision, made on 23 February 2011, to lift the state of emergency in Algeria and its stated intention to undertake a series of reforms gave rise to the hope that the legislative framework governing public freedoms – in particular, freedoms of association, assembly and demonstration – would be improved. In response to the Arab Spring, to widespread restlessness in the population as a result of the social crisis, and to the new regional environment, the Algerian authorities announced the dawn on a 'democratic opening' in early 2011.

As we have seen throughout this report, however, the lifting of the state of emergency was only a game of smoke and mirrors which served to conceal the fact that obstacles to the enjoyment of public and personal freedoms as well as human rights violations were getting worse. Most of the provisions that were part of the emergency law ended up being incorporated into the general legislation.

Today, one can only conclude that the legislative reform process undertaken in 2011 is a betrayal of the 'democratic opening' announced last year because the different laws enacted in 2012, in particular those dealing with associations and with information, impose even more restrictions on the exercise of freedoms by setting down significant limits to the affirmation and expression of a diversified civil society involved in the construction of a democratic country.

While Algeria has a well-deserved reputation with respect to the ratification of international conventions and protocols, the actual outcome in terms of implementing these treaties and integrating their provisions into domestic legislation is pitiful. The new associations law

is the latest example of the gap between domestic regulations and the rights of Algerian NGOs as prescribed in the international treaties ratified by Algeria, even though the latter, as stated in the country's very constitution, have precedence over domestic legislation.

The Euro-Mediterranean Human Rights Network and its Algerian members have for many years published reports and statements that highlighted these deviations and abusive practices used by the authorities to interfere in the activities of NGOs. They have made recommended steps aimed at improving the outcomes, but it is obvious that these recommendations have not been followed: on the contrary, the new legislation actually gives these abusive practices and administrative obstacles a legal status they did not have previously.

An active and diversified civil society plays a central role in democratic life and is a sign of its vitality. Since the brief democratic opening of 1989-90, Algerian civil society has developed further and become more diversified. From the Kabylia Black Spring of 2001 to the formation of groups devoted to protecting the rights of the unemployed of the National Coordination for Democratic Change in 2011, including the emergence of NGOs fighting impunity and the multiplication of independent labour unions, the unaffiliated organisations of civil society have been demanding the establishment of the rule of law and have contributed to the advancement of the democratic spirit and human rights.

For the rule of law to be established, it is imperative that the Algerian government undertake an in-depth process of opening and reform, and in particular that it encourage a genuine dialogue between the authorities and NGOs for the purpose of developing and implementing policies geared towards the public interest.

It is in the hope of providing elements that could support the needed reforms that we present a set of recommendations below.



RECOMMENDATIONS

The government of Algeria is called upon to undertake a wide-ranging review of the legal and administrative framework of its activities, with a view to allowing for the full, unimpeded expression of the rights to freedom of association, assembly and demonstration, including freedom of expression, opinion and information, and to ensure that any provisions resulting from this review are effectively complied with in practice.

This would mean the following, in particular:

With respect to the political situation and the general framework for democracy and human rights:

- to comply with the provisions of the International Covenant on Civil and Political Rights as well as with all the other international human rights instruments ratified by Algeria;
- to implement the recommendations of the Universal Periodic Review conducted by the Human Rights Committee of the United Nations, and to take into consideration the Committee's jurisprudence and that of other UN bodies, including the Committee on the Elimination of Discrimination against Women (CEDAW);

With respect to the exercise of the freedoms of association, assembly, demonstration and expression:

- to rescind Law 12-06 of 12 January 2012 on associations;

- to develop a new law on associations that complies with international standards, and in particular:
 - to guarantee that associations can be established upon simple notification of their existence to the authorities without any requirement for prior authorisation, to guarantee that the document acknowledging the receipt of their bylaws will be forwarded to them systematically and immediately;
 - to guarantee that associations whose registration has been denied by the administrative authority have access to an effective appeal mechanism within a reasonable period;
 - to remove penalties (prison sentences and fines) for the leaders of associations that are unregistered, unapproved, suspended or dissolved and that continue their activities, as these measures are contrary to the spirit of the declarative system;
 - to allow associations to receive funding from foreign sources without having to secure prior authorisation from the authorities;
 - to give foreign organisations wishing to carry out activities in Algeria or to cooperate with Algerian associations the same rights as those enjoyed by Algerian organisations;
- to rescind all laws and regulations banning meetings and demonstrations in public places; to put an end to practices that prevent civil-society organisations from meeting; and to encourage such organisations to express their views;
- to amend articles 144 to 148, 296 and 298 of the Criminal Code, which deal with the crime of slander, as well as article 46 of Law 06-10 of 27 February 2006, which makes it an offence to condemn, in writing or in speech, criminal actions perpetrated by agents of the state during the 1990s;
- to rescind the law of 2 December 1991 and amend Law 89-28, both of which deal with freedom of assembly and demonstration, in accordance with the guidelines outlined above, in order to put an end to the practices that prevent civil-society actors from holding meetings and expressing their views peacefully;
- to amend Law 12-05 of 12 January 2012 on the right to information, with a view to guaranteeing freedoms of expression, opinion and information, in particular by confirming the independence of journalists and facilitating the access of all citizens to the media;
- to rescind the Charter for Peace and National Reconciliation, which confers impunity upon the perpetrators of all human rights violations committed during the civil war, and to set up a ‘truth, justice and reconciliation commission’;
- to give official recognition to the status of human rights defender, including for

members of associations fighting impunity, by incorporating into domestic legislation the provisions of the United Nations Declaration on Human Rights Defenders;

- to invite the special rapporteurs of the United Nations who have requested permission to visit Algeria, and in particular:
 - the Special Rapporteur on the promotion and protection of human rights while countering terrorism;
 - the Special Rapporteur on extrajudicial, summary or arbitrary executions;
 - the Special Rapporteur on torture;
 - the Working Group on Arbitrary Detention; and
 - the Working Group on Enforced or Involuntary Disappearances;
 - to grant the requests of international non-governmental human rights organisations seeking to send delegations to Algeria;
 - to facilitate the granting of visas to officials of international non-governmental human rights organisations who have been invited by their Algerian partners.

The European Union is called upon:

- to take a clear and firm stand on the deterioration of the situation of human rights and public freedoms in Algeria, and in particular the freedoms of association, assembly and demonstration;
- to take all steps necessary to implement article 2 of the Association Agreements, on respect for democratic principles and basic human rights;
- to raise systematically the question of respect for freedoms and human rights in all dialogues held at the highest levels with the Algerian government in the context of EU-Algeria relations and in anticipation of negotiations to be held in the context of the European Neighbourhood Policy;
- to honour the Union's own commitment to increase funding and expand modes of support for civil society in general, as part of the Endowment for Democracy and the Civil Society Facility;
- to implement the European Union Guidelines on the protection of human rights defenders;
- to establish and maintain contacts with Algerian human rights defenders so as to document human rights violations and to provide direct support to defenders;
- to make the question of respect for freedoms of association, assembly and demonstration a core element of the next EU Human Rights Strategy for Algeria.

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ANNEXES

Annex 1: Timeline

- 5 October 1988: Riots are staged by young people in Algiers and other large cities (500 casualties)
- 23 February 1989: New Constitution; inauguration of multi-party democracy
- 12 June 1990: Municipal elections; FIS victory
- 25 May 1991: FIS calls for an unlimited general strike, protest marches and the occupation of public squares in Algiers
- 5 June 1991: Proclamation of the state of siege; a curfew is declared and the parliamentary elections slated to take place at the end of the month are postponed
- 26 December 1991: FIS wins the first round of parliamentary elections
- 11 January 1992: President Chadli Benjedid resigns; the electoral process is suspended
- 9 February 1992: Beginning of the state of emergency
- 14 June 1992: President Mohamed Boudiaf is assassinated
- 16 November 1995: President Liamine Zéroual is elected
- 28 November 1996: New Constitution
- 11 September 1998: President Zéroual resigns
- 15 April 1999: President Abdelaziz Bouteflika is elected
- 13 July 1999: Enactment of the law on civil harmony
- 10 January 2000: Proclamation of the decree on harmony
- April 2001: 'Kabylian Black Spring' (126 casualties)

- 14 June 2001: Last protest organised in Algiers; from this moment, protest marches are banned in the city
- 8 April 2004: Second term of Abdelaziz Bouteflika as president of Algeria
- 1 September 2005: Implementation of the Association Agreement EU-Algeria
- 29 September 2005: Referendum on national reconciliation
- 27 February 2006: Enactment of the law on the Charter for Peace and National Reconciliation
- 12 November 2008: Revision of the Constitution without a referendum
- 9 April 2009: Third term of Abdelaziz Bouteflika as president
- January-February 2011: Rising prices of basic necessities spark riots and demonstrations throughout the country
- 23 February 2011: Decree lifting the state of emergency
- 15 April 2011: President Bouteflika announces reforms
- 12 January 2012: News laws on associations, information, the electoral system and the representation of women in elected bodies are enacted

Annex 2. Algeria's international undertakings with respect to public freedoms and human rights

Algeria has ratified the major, legally binding human rights treaties and conventions. It has also endorsed declarations of principles which, while they are not legally binding, nonetheless have a strong 'moral dissuasion' content:

- Universal Declaration of Human Rights, 1948;
- International Covenant on Civil and Political Rights, 16 December 1966;
- Optional Protocol No. 1 to the International Covenant on Civil and Political Rights, recognising the competence of the Human Rights Committee to receive, consider and act upon communications from individuals who claim that a State Party is in violation of the provisions set forth in the Covenant, 16 December 1966;
- International Covenant on Economic, Social and Cultural Rights, 16 December 1966;
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 10 December 2008;
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 18 December 1979, and Optional Protocol to the Convention, which in article 7 addresses the right of women to get involved in organisations;
- African Charter on Human and Peoples' Rights (article 10 on freedom of association), 26 June 1981; Resolution 69 (XXXV) 04 of the African Commission on Human and Peoples' Rights, on the protection of human rights defenders in Africa, June 2004;
- Basic Principles on the Independence of the Judiciary, adopted by the United Nations General Assembly in 1985;
- Barcelona Declaration on the Euro-Mediterranean Partnership (EMP) between the European Union and the countries of the eastern and southern Mediterranean, 28 November 1995;
- Declaration on Human Rights Defenders, adopted unanimously by the United Nations General Assembly, 9 December 1998;
- Basic Principles on the Role of Lawyers, adopted by the United Nations General Assembly, 1990;
- Arab Charter on Human Rights, 2004;
- International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the United Nations General Assembly, December 2006.

Annex 3. Memorandum: Assessment of Law 12-06 on associations²⁶

1. Under the new law, the registration of associations is no longer a matter of simply notifying the authorities. Thus the creation of an NGO is no longer subject to a 'declarative regime' based on simple notification but must be pre-authorized by the government, which must either send the association a registration receipt that signifies its approval or notify it that registration has been denied (art. 8). Thus the new legislation entrenches in law a practice that was already widely applied by the administrative authorities, and it gives them broader powers while failing to guarantee that NGOs will be governed by independent and impartial regulations.

Under Law 12-06, the government can refuse to register an association whose purpose or goals are deemed 'contrary to basic national values and to law and order, public morality and the provisions of existing laws and regulations' (art. 39). In concrete terms, there are reasons to fear that these extremely vague criteria will allow the bureaucracy to block the registration of a large number of human rights NGOs, women's rights organisations seeking the repeal of the Family Code, and associations of families of victims of the 1990s civil war, such as SOS Disparus, which has been advocating for truth and justice beyond what is provided for in the Charter for

Peace and National Reconciliation.²⁷

If the government does not respond to an application, the association is deemed to be legally constituted, but it must still wait until it receives the registration acknowledgment before it can begin to operate legally (art. 11). Moreover, the law adds that in the event that an association, after having been rejected by the authorities, is able to win its case in a court of law, 'the government has up to three months to nullify the registration of the association' (art. 10). Not only does this prerogative conferred on the government create a very cumbersome procedure, but it gives the authorities the power to control the entire range of NGOs *ex post facto*.

In addition, the highly controversial article 45 of Law No. 90-31, which provided for prison sentences for 'anyone administering an association that has not been approved' and which hung like a sword above the heads of activists working in associations that had not received legal confirmation of their registration, has been retained in the new legislation. While article 46 of Law 12-06 reduces the length of prison sentences, it considerably increases the amount of fines. It is unfortunate that the provision of Law 90-31 that left to a judge the decision to choose between the two types of penalties has now been eliminated.

And finally, while Law 90-31 stipulated that 15 founding members were needed to

²⁶ This is an updated version of a memorandum originally released by EMHRN, CFDA and LADDH in October 2011, when the proposed law was still being debated. The new assessment is based on the law as enacted in January 2012.

²⁷ Article 46 of Order 06-01 of 27 February 2006 also provides that 'anyone who, in statements, writings or by any other means, uses or exploits the wounds of the national tragedy to attack the institutions of the People's Democratic Republic of Algeria, weaken the state, impugn the reputation of officials who have served the state with dignity, or tarnish the international image of Algeria' will receive a prison sentence of between three and five years, and a fine of between 250,000 and 500,000 Algerian dinars.

establish a new association – a cumbersome requirement in itself that the associations had denounced at the Estates-General²⁸ – the new law is even more demanding, requiring a minimum of 10 members to create an association at the local (commune) level; 15 members for a wilaya-level organisation, who must be from at least three different communes; 21 members for a multi-wilaya organisation, who must be from at least three different wilayas; and no fewer than 25 members from at least 12 wilayas for a national organisation – even though, in general, only two people are needed to form an association.

2. The new law states that the financial resources of associations are made up of, among others, subsidies ‘granted’ by the state, the *département* or the commune. This particularly vague wording raises concerns that the authorities could rely on a narrow interpretation of this provision to control all NGO funding.

Contrary to the previous legislation, which allowed Algerian associations to receive donations and bequests from foreign NGOs once their request has been approved by the authorities, Law 12-06 stipulates that, ‘except in cases where duly established cooperation agreements exist’, Algerian associations are forbidden from receiving donations, grants or any other type of contribution from any ‘foreign mission or non-governmental organisation’ and that any funding must first be allowed by the relevant authority (art. 30). In other words, the new law deprives associations of a source of funding that is critical to their survival. In addition, by imposing a regime

28 The ‘Estates-General of civil society’ took place on 14-16 June 2011 under the aegis of the National Economic and Social Council (CNES) in order to, as President Bouteflika put it, ‘allow civil society to express itself freely in the realm of a new system of governance’.

of so-called partnership agreements, the government grants itself additional control over the resources of Algerian NGOs, and thus over their activities and their partners, enabling it to interfere in their internal affairs and to force them to follow a preferred course of action.

At the same time, while article 18 reiterates provisions contained in Law 90-31,²⁹ article 19 details the information that NGOs must supply to the government after each general assembly (minutes of meetings, activities report, financial report), giving the authorities greater control over NGO activities. Associations that refuse to provide this information will face a fine (art. 20).

3. The provisions of article 21 of the 1990 law, which stated that only national associations could become members of international NGOs and that any such membership required prior approval by the Interior Ministry, have been amended. Under the new law, all associations that have been ‘approved’ may join foreign NGOs, but the Interior Minister must be informed of this decision beforehand, and the Foreign Ministry will be asked to give an opinion. In addition, the Interior Minister has 60 days to oppose the application of an Algerian association to join an international organisation. Law 12-06 also states that cooperation within a partnership with foreign or international NGOs must be pre-approved by the government, whereas Law 90-31 had no such requirement.

4. Another source of concern has to do with the fact that foreign NGOs – that is, associations ‘whose headquarters are based abroad or, if based in Algeria, that are partly

29 Article 18 stipulates that an association must notify the proper authorities of any changes in its statutes and its governing bodies.

or completely headed by foreigners' (art. 59) – are subject to a different and much more restrictive regime than Algerian associations. First, the new law gives the government 90 days to grant or refuse its approval in the case of foreign organisations, whereas only 60 days are needed for domestic associations (art. 61).

Second, article 63 of the new law states that 'a request for recognition submitted by a foreign organisation must have as an objective the implementation of provisions set out in an agreement signed between the Algerian government and the government of the country of origin of the foreign association – that is, to promote friendly relations and brotherhood between the Algerian people and the people of the other country'. This is tantamount to giving the government the right to decide what activities foreign associations may perform. Article 65 raises the stakes by stipulating that the agreement may be suspended or terminated 'if the foreign association clearly interferes in the affairs of the host country or performs activities that violate national sovereignty, the established institutional order, national unity, the integrity of the national territory, law and order, public morality, or the 'civilisational values' of the Algerian people'. This very vague language restricts freedom of association even further, highlighting a determination to silence any criticism voiced by foreign NGOs.

The financial resources of foreign associations are also targeted. The new law states that 'a ceiling may be imposed' on the amount of their financial resources (art. 67).

5. On the subject of the suspension and dissolution of associations, the procedure set out in the new law results in severe

restrictions on freedom of association. An association may see its activities suspended or may be dissolved 'if it interferes in the internal affairs of the country or violates national sovereignty' (art. 39). This very vaguely worded provision deprives NGOs of the ability to review, criticise and monitor the state in the conduct of public policy, even though this is a prerequisite for the operation of any democracy. Our associations believe that all citizens, wherever they may live, have a right and a duty to be involved in the affairs of their country, and point out that, according to article 22 of the International Covenant on Civil and Political Rights,³⁰ 'no restrictions may be placed on the exercise of [the right to freedom of association] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others'.

Article 43 of the law states that an association may be dissolved if it has 'received funding from foreign missions or NGOs' or 'performed activities other than those stipulated in its bylaws'. The ambiguous wording of this provision again raises concerns about an improper interpretation by the bureaucracy. It would have been more consistent with the liberal legislations in effect in other countries of the region to allow the dissolution of an association that pursued 'objectives' or 'goals' that are contrary to its statutes.

Even worse, that same article allows a petition for the dissolution of an association to be submitted by 'a third party that is in a conflict-of-interest situation with that association', which suggests that an

³⁰ Ratified by Algeria on 12 September 1989.

organisation supported or even created by the government (a so-called GONGO, or government-operated NGO) could launch legal proceedings to prevent an independent NGO from carrying out its activities.

With regard to the procedure for suspending an association, the new law nullifies a valuable legal precedent. Whereas, since 1990, a judge's decision was needed to suspend an association, this safeguard is no longer present in Law 12-06 and all that is needed now is an administrative decision to suspend the activities of an association if they are deemed to circumvent certain provisions of the law – without specifying the provisions in question (art. 41).

Finally, contrary to the recommendation of the United Nations Special Rapporteur on human rights defenders, which suggested that 'in the event of the adoption of a new law, all previously registered NGOs should be considered as continuing to operate legally and be provided with accelerated procedures to update their registration',³¹ article 70 provides that 'associations duly constituted under Law 90-31 must now comply with the law by submitting new statutes that are in compliance with the law'. This puts in jeopardy all the NGOs that were established under the previous legislation. Those failing to meet this requirement within a specified deadline will automatically be dissolved.

³¹ Report on Freedom of Association, Conclusions and Recommendations, A/64/226, par. 108.

EMHRN - The Exercise of Freedom of Association, Assembly and Demonstration in **Algeria**

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