

## ALGERIA

**Judges and public prosecutors are not fully independent. Political manipulation over the judiciary remains a principal concern. The judicial system does not provide for fair trials. Lawyers suffer continuous harassment by the executive. A draft amendment to the 1991 legal profession law was proposed by the Government in 2001. This prospective amendment would serve to place lawyers under the full control of the public prosecutor, thereby undermining their independence.**

Algeria is a republic, with the President as head-of-state. According to the Constitution, the President has the capacity to appoint and dismiss the Prime Minister, and may dissolve the Parliament. Although the Constitution provides for Cabinet Ministers to be designated by the Prime Minister, in practice the President has exercised substantial influence in respect of such appointments. The legislature is bicameral, consisting of a popularly elected lower chamber, the National Popular Assembly, and an upper chamber, the National Council. One third of the National Council members are appointed by the President, and the other two thirds are elected by and from among the local Assemblies.

Abdelaziz Bouteflika, benefiting from widespread support by the military, was elected President in April 1999. The 1992 state of emergency has remained in force under Mr. Bouteflika's presidency, undermining many constitutional provisions aimed at protecting the rights of citizens.

### HUMAN RIGHTS BACKGROUND

Although there have been notable improvements in the human rights situation, serious abuses have persisted in a number of areas, and the overall human rights record of the country has remained poor. The Government has indicated that it is treating allegations of human rights abuses seriously, yet has failed to undertake meaningful and adequate investigations into many allegations of extra-judicial killings, torture, ill-treatment and disappearances involving security forces.

The National Observatory on Human Rights, established by the Government in 1999, was replaced in March 2001 by the National Consultative Commission for the Promotion and Protection of Human Rights. This institutional modification appeared to bring no fundamental change in the mission and policy of the organ. No information in respect of the former human rights body's nine-year action has thus far been made publicly available.

State officials have continued to benefit from a long-lasting impunity. The 1999 Law on Civil Harmony (*Concorde Civile*) and the January 2000 general Amnesty Law have effectively extended impunity to members of armed opposition groups. These laws provide insufficient clarity as to the requirements for benefitting from the amnesty and fail to provide for an independent mechanism investigating individual cases. The legislation is aimed toward a policy of reconciliation and has undermined the rights of victims to seek redress for crimes committed by armed opposition groups. Although the authorities have not provided precise figures as to the number of persons amnestied or exempted from prosecution, government sources have indicated that some 5,500 members of armed groups had surrendered between July 1999 and 13 January 2000 alone. (For a detailed background on Algerian amnesty laws, see *Attacks on Justice, 10th edition*.)

There was apparently some decrease in the number of extra-judicial killings committed by security forces during 2000. However, killings by armed groups increased by some 20 percent compared with 1999, resulting in the deaths of more than 2,500 persons, many of whom were civilians. New cases of enforced disappearance were also reported in 2000. The involvement of the security forces in the approximately 4,000 disappearances committed since 1994 has yet to be clarified, despite pledges by President Bouteflika to take action to solve such cases. In May 2000, the Ministry of Justice claimed that 1,146 disappearances had been clarified, but the Government has declined to provide a list of those cases. No security force member has been prosecuted for involvement in disappearances.

Despite constitutional and the legislative prohibitions on torture and other cruel, inhuman, or degrading treatment, security forces continued to resort to such practices when interrogating criminal suspects and persons accused of involvement in violent activities. The security forces frequently arbitrarily arrested and detained suspects incommunicado. The Government and judicial authorities were also reportedly implicated in the operation of secret detention centers. Under the 1992 Anti-terrorist Law, suspects may be held in detention for up to 12 days without charge, instead of the usual 48 hours, and police are not required to have a warrant when making an arrest.

Although the Constitution prohibits discrimination based on sex, many women continued to suffer legal and social discrimination. The 1984 Family Code, essentially based on *Shari'a*, institutionalises a lawful status of inequality for women in family issues. President Bouteflika took a positive step towards improving the status of women in the workplace in August 2000 when he increased the number of courts led by female judges. Women remained specific targets for armed groups. Armed opposition forces were said to have engaged in the practice of kidnapping women and holding them captive for the purpose of rape and servitude.

A 1992 state of emergency law and government practice has served to severely restrict the rights of assembly and association. Political groups and non-governmental organisations have often been refused legal registration and permission to hold outdoor demonstrations. The Government repeatedly has prevented public gatherings and has used force to disperse unauthorised rallies. In June 2001, an indefinite ban on demonstrations was imposed in Algiers, in response to widespread unrest. Following the killing of a young boy in a police station near Tizi Ouzou, the capital of Greater Kabylia, a wave of sometimes violent demonstrations took place in April 2001. Security forces broke up the demonstrations brutally, killing dozens of citizens and injuring more than 1,300 persons.

Independent newspapers appeared to cover politically sensitive issues. However, self-censorship was widespread among journalists, in particular with regard to criticism of the army. The Government continued to exert influence on the press through its monopoly over both printing and advertising companies. Broadcast media remained under State control. In June 2001 the Government adopted an amendment to the Penal Code strengthening prison terms and increasing fines for press offences. Under the new amendment, a person who uses an expression deemed "offensive, insulting or defamatory" to the President (article 144 bis) may be sentenced to imprisonment of three to twelve months. (The sentence may be doubled in the event of a subsequent offence.) These sanctions may also be applied in cases of defamation against "the Parliament, or one of its two houses, the National Popular Army" and any "other institution or constituent body." The 1966 Penal Code amendment law also stipulates that anyone offending the Prophet and "*les envoyés de Dieu*" or denigrating Islam may be sentenced to a term of 3 to 5 years imprisonment (Article 144 bis 2).

## JUDICIARY

The Government does not fully respect the independence of the judiciary provided for under the Constitution. In August 2000, the commission set up by President Bouteflika in November 1999 to review the functioning of the judiciary presented a report, which has not been made publicly available. Following the submission of the report, the President replaced 80 per cent of the heads of lower courts and 99 per cent of those of higher courts. This measure appeared to be aimed mainly at creating the appearance of good will on the part of the Government, although no essential reform was planned to improve the judiciary. In practice, the judicial system remained slow and inefficient.

### *Judiciary structure*

The Judiciary is composed of a Supreme Court, three Courts of appeal and a system of lower courts divided among civil, criminal and commercial courts. The jurisdiction of the military courts was previously limited to cases of members of the military forces, but problematically has now been extended to include cases of civilians accused of state security crimes under the state of emergency law.

The Supreme Court regulates the activity of courts and tribunals and the State Council (*Conseil d'Etat*) regulates that of the administrative courts. Conflicts over jurisdiction between the Supreme Court and the State Council are reviewed by the Tribunal of Conflicts. A Constitutional Council examines the constitutionality of treaties, laws and regulations and has the capacity to nullify unconstitutional acts.

### *Judges and Magistrates*

Under legislation dating from 1989, the High Judicial Council is responsible for the appointment, promotion and transfer of magistrates. However subsequent decrees have curtailed the independence of the High Judicial Council and reinstated broad powers to the Minister of Justice in respect of the career of magistrates. Thus, judges and prosecutors have been subjected to the will of the political organs and security of tenure is no longer provided. The Algerian magistrature thus remains strongly influenced by the Government. The resulting manipulation of magistrates has served to undermine the right of individuals to a fair trial.

The Government has issued orders according to which judges have been unable to discharge and release suspects, even temporarily. Judges and prosecutors expressing their disapproval over judicial functioning or political manipulation of the judiciary have been subjected to disciplinary sanctions, suspension or transfer. Some judges were reportedly arrested and detained following declarations or decisions contradicting government policy or instructions.

Security forces frequently handled the cases of armed opposition suspects in a violent and summary manner, thus preventing judicial due process. When a suspect is brought to court, magistrates typically allow manifest irregularities, such as prosecution based on a declaration made under torture and summary investigation.

### *Lawyers*

The capacity of lawyers to carry out their professional responsibilities in court was strictly circumscribed by the authorities. Lawyers referring to human rights, torture or manipulation of the judiciary were frequently subject to severe sanctions. Government officials applied pressure to lawyers through a range of measures aimed at hindering their work.

The legal profession is regulated by law 91-04 adopted in 1991. Following the submission of recommendations to the Government by the National Commission for Judicial Reform, a proposal to amend the 1991 law was drafted. If adopted, this text would clearly undermine the independence of lawyers by placing them under the absolute control of the public prosecutor. The proposed amendment provides for a judicial and police inquiry to be undertaken prior to any inscription to the Bar. The powers of the prosecution would increase substantially, in particular through the role of the public prosecutor in disciplinary complaints lodged against lawyers. Contravening the United Nations Basic Principles on the Role of Lawyers, the draft amendment (by modification of article 48) empowers the public prosecutor to institute proceedings against barristers with the Disciplinary Council of the Order of Barristers. Moreover, the 13 Presidents of the Algerian bars would be required to inform the public prosecutor of the decisions of disciplinary councils (draft article 53), and the state prosecutor would be able to appeal against the decisions (draft article 54). The 1991 law had restricted transmission of disciplinary-related information and the right to appeal disciplinary decisions to the Justice Ministry and the offending lawyer.

The provision requesting the President of a bar to be present when police search the office of a lawyer would be removed from article 80 of the 1991 Law, opening the door to further abuses of professional secrecy. The draft text also severely curtails the right of lawyers to freedom of expression. Lawyers would not have the right to communicate any case-related information to the general public (draft additional article 79 bis). Moreover, they would be prohibited from boycotting or withdrawing from a court hearing (draft additional article 87 bis). It was reported that sanctions to punish the violation of this provision would include sentences of imprisonment.

The adoption of this draft amendment would seriously damage the independent functioning of the legal profession and overall administration of justice in Algeria. On 30 June 2001, the President of the National Union of Algerian Bars addressed the Justice Minister in order to express the concern of the Bar over the threats posed by the draft amendment to the legal profession law.

## CASE

**Sofiane Chouiter** {Lawyer, member of the Algerian League for the Defense of Human Rights (*Ligue algérienne de défense des droits de l'homme*)}: Mr. Chouiter has been subject to harassment since 24 February 2000. Police officers have been following him on a routine basis, thus severely restricting his ability to carry out his professional duties.