

Waiting for Redress

The Plight of Victims of Enforced Disappearances in Algeria

Baseline Study

August 2020



About MENA Rights Group

MENA Rights Group is a legal advocacy organisation working on the protection and promotion of universal human rights in the Middle East and North Africa (MENA) region. We adopt a holistic approach and operate both at the individual and structural levels. We work directly with victims, lawyers, and human rights defenders, providing legal assistance to individuals facing severe human rights violations. We advocate for human rights based legal and policy reforms.

For a greater impact, we raise awareness on human rights issues by publishing reports, participating in public debates and conferences, and lobbying stakeholders. We also advocate publicly on behalf of the victims they are representing and bring their cases to a broader audience. Additionally, they collaborate closely with local actors to monitor human rights violations.

About the Enforced Disappearances in Africa Project

The Enforced Disappearances in Africa Project is a joint project by the African Centre for Justice and Peace Studies (Sudan), Lawyers for Justice in Libya (Libya), MENA Rights Group (Algeria), REDRESS (UK) and Zimbabwe Lawyers for Human Rights (Zimbabwe). It supports human rights lawyers and victims' groups to bring cases challenging enforced disappearances. It empowers victims to speak about their own experiences, set up victims' networks and advocate for justice on their own behalf. It raises awareness about the problem with the African Union, relevant UN bodies and specific governments. It seeks to work with the African Commission on Human and Peoples' Rights to draft and adopt comprehensive guidelines on enforced disappearances in Africa.

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Table of contents

- Acronyms 5
- Executive Summary 7
- 1 Background..... 8**
 - 1.1 The establishment of an independent Algeria 8**
 - 1.2 Protests and the new Constitution 8**
 - 1.3 The first multi-party elections 9**
 - 1.4 The civil war..... 10**
 - 1.4.1 The emergence of militant groups..... 10
 - 1.4.2 The authorities’ response 11
 - 1.4.3 The end of the war 12
- 2 The Practice of enforced disappearances during the civil war 13**
 - 2.1 Disappearances as a form of repression 13**
 - 2.2 The widespread and systematic nature of enforced disappearances 13**
 - 2.3 Patterns of enforced disappearances 14**
 - 2.3.1 Mass arbitrary arrests and lack of due process 14
 - 2.3.2 *Incommunicado* and secret detention 15
 - 2.3.3 The practice of torture 15
 - 2.3.4 Summary executions 15
 - 2.4 Perpetrators..... 16**
 - 2.4.1 The specialised anti-terrorism units working as “combined forces” 16
 - 2.4.2 Ordinary units of the security forces..... 16
 - 2.4.3 Paramilitary groups 17
 - 2.5 Most affected locations and populations 17**
 - 2.6 Gender impact 18**
 - 2.7 Data on enforced disappearances..... 19**
 - 2.8 The creation of associations of families and victims 21**
- 3 The authorities’ response and the plight of families 23**
 - 3.1 The authorities’ failure to investigate..... 23**
 - 3.2 The Charter for Peace and National Reconciliation 24**
 - 3.2.1 Enactment..... 24
 - 3.2.2 Ordinance No. 06-01 25
 - 3.2.3 Compensation 26
 - 3.3 Further impediments to the families’ right to truth 27**
 - 3.3.1 Freedom of association..... 27
 - 3.3.2 Freedom of peaceful assembly..... 28

3.3.3	Freedom of expression	29
3.3.4	The lack of independence of the judiciary.....	30
4	Enforced disappearances before international human rights mechanisms	32
4.1	Ratification of international human rights treaties.....	32
4.2	Observations and recommendations of UN bodies	33
4.2.1	Universal Periodic Review (UPR).....	33
4.2.2	Human Rights Committee	33
4.2.3	Committee against Torture	33
4.2.4	Working Group on Enforced or Involuntary Disappearances	34
4.3	Individual communications before the Human Rights Committee	34
4.3.1	Admissibility	34
4.3.2	Burden of proof	35
4.3.3	Violations	35
4.3.4	Recommendations contained in the HR Committee's views	36
4.3.5	Lack of implementation by the authorities.....	37
4.4	Regional Framework	38
4.4.1	Observations and recommendations	38
4.5	Universal Jurisdiction.....	39

Acronyms

ACtHPR	African Court on Human and Peoples' Rights
ACHPR	African Commission on Human and Peoples' Rights
AI	Islamic Salvation Army (<i>Armée islamique du salut</i>)
ANP	Algerian People's National Army (<i>Armée nationale populaire</i>)
CAT	Committee against Torture
CCLAS	Centre for the Conduct and Coordination of Anti-Subversive Action
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CFDA	Collective of Families of the Disappeared in Algeria (<i>Collectif des familles de disparus en Algérie</i>)
CMW	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
CNCPPDH	National Consultative Commission for the Promotion and Protection of Human Rights (<i>Commission nationale consultative de promotion et de protection des droits de l'Homme</i>)
CRC	Convention on the Rights of the Child
CSM	High Council of Judiciary (<i>Conseil supérieur de la magistrature</i>)
DRS	The Department of Intelligence and Security (<i>Département du Renseignement et de la Sécurité</i>)
FEMED	Euro-Mediterranean Federation against Enforced Disappearances (<i>Fédération euro-méditerranéenne contre les disparitions forcées</i>)
FIS	Islamic Salvation Front (<i>Front islamique du salut</i>)
FLN	Front de Libération Nationale
GC	Communal guards (<i>Gardes communaux</i>)
GIA	Armed Islamic Group (<i>Groupe islamique armé</i>)
GLD	Self-Defence Groups (<i>Groupes de légitime défense</i>)
HCE	High Council of State (<i>Haut conseil d'État</i>)
HR Committee	UN Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights

LADDH	Algerian League for Human Rights (<i>Ligue algérienne des droits de l'Homme</i>)
LDH	French Ligue des Droits de l'Homme (<i>Ligue des droits de l'Homme</i>)
MEI	Movement for an Islamic State (<i>Mouvement pour un État islamique</i>)
MIA	Islamic Armed Movement (<i>Mouvement islamique armé</i>)
ONDH	National Observatory for Human Rights (<i>Observatoire national des droits de l'Homme</i>)
SIG	Special Intervention Group (<i>Groupe spécial d'intervention</i>)
SNM	The National Union of Magistrates (<i>Syndicat national des magistrats</i>)
UNCAT	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
UPR	Universal Periodic Review
WGEID	UN Working Group on Enforced or Involuntary Disappearances

Executive Summary

The “dirty war” of the 1990s is one of the darkest decades of Algerian history and resulted in thousands of people becoming victims of torture, enforced disappearances and other human rights violations. Following the electoral victory of the Islamic Salvation Party in 1991, the Algerian government negated the results, plunging the country into a civil war. The security forces resorted to the practice of enforced disappearances to target political opponents and instil fear into the population. Perpetrators included members of the different branches of the state security forces, as well as members of paramilitary militias.

No one was safe from enforced disappearances. Anyone deemed sympathetic to the Islamic groups, no matter their age, gender, or economic status, could become a victim. Victims were taken from their homes, places of work and public spaces. They were often arrested without a warrant and held *incommunicado* for lengthy periods of times. Many were never heard from again. The barracks of the Department of Intelligence and Security, and close to 100 secret detention centres, were primary locations of detention where numerous victims were tortured and eventually executed. While the majority of victims were men, women bore the brunt of these disappearances, suddenly finding themselves at the forefront of the search for their loved ones, in an attempt to know the truth and obtain justice.

It has been over two decades since the Algerian civil war ended. However, the authorities have continued to deny the existence of a deliberate policy of enforced disappearances during the conflict, accrediting them to isolated incidents sporadically undertaken by officials acting on their own initiative. As a result of the authorities’ denial, no investigations have been carried out into the thousands of disappearances and victims are still waiting for justice and reparations. The official denial of the use of enforced disappearances is embodied in the Charter on Peace and National Reconciliation adopted in 2006. The Charter provides blanket amnesties for perpetrators of human rights violations, including enforced disappearance. Victims, therefore, cannot seek justice for their loved ones at the domestic level and cannot seek nor obtain any information from the government about the fate of missing persons.

As a result, families of victims have resorted to international mechanisms to seek justice and raise awareness about enforced disappearances in Algeria. The Human Rights Committee (HR Committee) has repeatedly found that Algeria violated its international obligations and urged the government to investigate cases of enforced disappearances, identify and prosecute the perpetrators, and provide reparations to the victims, including access to truth and compensation. The Committee has also repeatedly urged the Algerian government to repeal the Charter as blanket amnesties violate human rights law standards, when they cover gross violations of human rights and serious violations of humanitarian law.

1 Background

1.1 The establishment of an independent Algeria

1. In 1962, Algeria became an independent state. When Algeria achieved independence from France, the Constitution was adopted and a unique party regime, the *Front de Libération Nationale* (FLN), was established. Under the FLN, Algeria became a single-party state in which opposition political parties were banned, with the head of state controlling the army, state, and the FLN.¹ Ahmed Ben Bella was elected as the first President of the Algerian Republic on 15 September 1963.²
2. In 1965, Ben Bella's government was overthrown by a military coup led by Houari Boumédiène, who became Algeria's second president. Boumédiène's government pivoted from Ben Bella's focus on socialist cooperative businesses, towards the financing of large state enterprises, including the nationalisation of Algeria's oil industry.³
3. President Boumédiène was replaced by Chadli Bendjedid in February 1979. He was subsequently re-elected in 1983 and 1988. Bendjedid's government launched new restructuring programs and economic reforms calling for managerial and financial autonomy of state-owned corporations, the shortcomings of which became rapidly apparent.⁴

1.2 Protests and the new Constitution

4. By the mid-1980s, decreasing oil and gas prices, corruption, and poor management depressed the Algerian economy, leading to significant political and social unrest.⁵ Public demonstrations became well-organised.⁶ They were often heavily and violently repressed by the Algerian army. Most famously, on 6 October 1988, thousands of protestors took to the streets calling for political reforms, including the dismantling of the one-party system.⁷ The army was deployed in Algiers, provoking clashes with protestors for five days; between 150 and 500 people died or were arrested and tortured during that period.⁸ Civil society widely denounced the human rights abuses committed in October 1988.⁹ In particular, the Algerian League of Human Rights (*Ligue algérienne des Droits de l'Homme* – LADHD) issued two reports denouncing the violations suffered by protestors.¹⁰

¹ Robert Mortimer, *Islam and Multiparty Politics in Algeria*, 45 *Middle East Journal*, 1991, pp. 575-576.

² *Ibidem*.

³ Chérif Begga, *Attempts to Industrial Reforms in Algeria: Do they fit the Logic of Globalization?*, 16 *Topics in Middle Eastern and African Economies*, May 2014, pp. 96-98.

⁴ *Ibid.*, p. 101.

⁵ *Ibidem*.

⁶ Youcef Bouandel, *Political Parties and the Transition from Authoritarianism: The Case of Algeria*, 41 *Journal of Modern African Studies*, March 2003, pp. 1-8.

⁷ *Ibidem*.

⁸ *Ibidem*.

⁹ Collectif des familles de disparus en Algérie, *Enforced disappearances in Algeria: a crime against humanity*, 1990-2000, p. 21, available at <http://www.algerie-disparus.org/app/uploads/2018/08/Rapport-CFDA-EN.pdf>.

¹⁰ LADHD, Conférence de presse, 16 November 1988, available at https://algeria-watch.org/pdf/pdf_fr/ladh_novembre_88.pdf; LADHD, Report, 18 October 1988, available at https://algeria-watch.org/pdf/pdf_fr/ladh_oran.pdf. See also the testimonies of victims of torture published by the National

5. On 10 October 1988, in response to the protests, President Bendjedid announced his commitment to political liberalisation, beginning with a referendum to amend the Constitution.¹¹ More than 90% of voters endorsed the creation of a multiparty system, and the enshrinement of the rights to freedom of peaceful assembly and association. The new Constitution was adopted on 23 February 1989. By the end of that year, 60 new political parties were created.¹²

1.3 The first multi-party elections

6. In June 1990, Algeria's first multi-party municipal and provincial elections since the country's independence, were held. The Islamic Salvation Front (*Front Islamique du Salut* – FIS), whose declared aim was to abolish the Constitution and establish an Islamic republic, defeated the governing FLN.¹³
7. In the run-up to parliamentary elections, the FIS called for an indefinite general strike, starting on 25 May 1991, in response to an FLN-sponsored redistricting bill that would threaten the FIS' electoral prospects.¹⁴ President Bendjedid subsequently announced the suspension of the parliamentary elections and declared a state of emergency, effectively transferring the powers related to the maintenance of public order from the civilian to the military authorities.¹⁵ After nearly four months, the state of emergency was lifted, and on 26 December 1991, the FIS won the first round of the parliamentary elections.¹⁶
8. However, in January 1992, the Algerian army intervened to annul the results of the December 1991 election. President Bendjedid resigned on 11 January 1992 after dissolving the parliament.¹⁷ The army seized power in Algiers and suspended the second round of parliamentary elections.
9. The military command then established a High Council of State (*Haut Conseil d'État* – HCE)¹⁸ to take over the functions of the Presidency until 1993.¹⁹ Mohamed Boudiaf, one of the FLN's founders, was named as the head of the HCE.²⁰ The HCE

Committee against Torture: Comité national contre la torture, *Cahier noir d'octobre*, Entreprise nationale des arts graphiques, Alger, 1989, published by Algeria-Watch on 5 October 2008, available at: <https://algeria-watch.org/?p=19282>). See also Myriam Aït-Aoudia, *Des émeutes à une crise politique: les ressorts de la politisation des mobilisations en Algérie en 1988*, Politix, April 2015, pp. 59-82, available at <https://www.cairn.info/revue-politix-2015-4-page-59.htm>.

¹¹ Political Parties and the Transition from Authoritarianism, *op. cit.*, p. 8.

¹² *Ibidem*.

¹³ Youssef M. Ibrahim, *Islamic Party in Algeria Defeats Ruling Group in Local Elections*, New York Times, 14 June 1990, available at <https://www.nytimes.com/1990/06/14/world/islamic-party-in-algeria-defeats-ruling-group-in-local-elections.html>.

¹⁴ Robert Mortimer, *Islamists, Soldiers, and Democrats: The Second Algerian War*, 50 Middle East Journal 18, 1996, p. 23.

¹⁵ Home Office, *Algeria: April 2000*, Country Information & Policy Unit, Immigration & Nationality Directorate, April 2000 (Country Information & Policy Unit, 2000), para. 3.13, available at <https://www.refworld.org/pdfid/486a534f0.pdf>.

¹⁶ See Enforced disappearances in Algeria: a crime against humanity, *op. cit.*, p. 22. See also Luis Martinez, *The Algerian Civil War, 1990-1998*, Columbia University Press, 2000.

¹⁷ A number of observers considered it as a *coup d'état* and that President Chadli was forced to resign by the military command. See Enforced disappearances in Algeria: a crime against humanity, *op. cit.*, p. 23.

¹⁸ *Ibidem*. The High Security Council is a purely advisory body which is tasked to provide the President of the Republic with opinions on all issues relating to national security, according to Article 162 of the Algerian Constitution of 23 February 1989. See the full text establishing the HSC here: https://algeria-watch.org/pdf/pdf_fr/instauration_hce_.pdf.

¹⁹ *Algeria: April 2000*, *op. cit.*, para. 3.16.

²⁰ Robert Mortimer, *op. cit.*, p. 26.

banned public gatherings, including prayers, dissolved the FIS,²¹ and declared a state of emergency in response to violent protests during the first week of February 1992.²² This state of emergency was not lifted until February 2011. By March 1992, thousands of FIS activists had been arrested and detained in camps in the Sahara Desert.²³

10. In June 1992, only months after his appointment as head of the HCE, Mohamad Boudiaf was assassinated by his bodyguard, who was FIS sympathiser.²⁴ His successor, Ali Kafi, announced in September 1992 a legislative decree²⁵ extensively outlining the offences likely to be considered as acts of terrorism or subversion. At the same time, the Centre for the Conduct and Coordination of Anti-Subversive Action (CCLAS) was created to gather special units of the army in charge of the fight against terrorism.²⁶

1.4 The civil war

1.4.1 The emergence of militant groups

11. Violence increased in Algeria throughout 1992 and 1993. After the FIS' dissolution, a variety of Islamist groups stepped into the resulting political vacuum. Initially, those included the Islamic Armed Movement (*Mouvement Islamique Armé – MIA*), the Movement for an Islamic State (*Mouvement pour un Etat islamique – MEI*), the Armed Islamic Group (*Groupe Islamique Armé – GIA*), and the Islamic Salvation Army (*Armée Islamique du Salut – AIS*), all of which justified the use of violence as a response to state repression and the annulment of the FIS' 1991 electoral victory.
12. In order to finance their activities, these groups resorted to raids, armed robberies, extortion, pillaging of commercial traffic, taxing local populations, seizing properties, contraband trade and involvement in the parallel economy.²⁷
13. A schism between the MIA, MEI and GIA quickly emerged. GIA began conducting indiscriminate attacks against civilians, including airports bombings, the killing of government employees or supporters, and community massacres.²⁸ Between 1995 and 1998, an estimated 75% of attacks carried out by rebel groups were aimed at foreigners, journalists, academics and civilians.²⁹
14. By 1994, the GIA declared war on the newly-renamed Islamic Salvation Army, a group formed by MIA, and several smaller groups, affiliated with the FIS' political

²¹ The FIS was dissolved on 4 March 1992 by the Administrative Chamber of the Algiers Tribunal. This decision was issued at the request of the Minister of Interior who accused them in a complaint filed on 9 February 1992, the day the state of emergency was declared, of "pursuing through subversive means objectives which placed the institutions of the State in peril". By applying the decree on the state of emergency, the communal and provincial people's assemblies with a FIS majority were dissolved on 11 April 1992 and replaced by the Executive Community Delegations. See Enforced disappearances in Algeria: a crime against humanity, *op. cit.*, p. 24.

²² Algeria: April 2000, *op. cit.*, para. 3.16.

²³ *Ibid.*, para. 3.17.

²⁴ *Ibidem.*

²⁵ Décret législatif n°92-03 du 30 septembre 1992 relatif à la lutte contre la subversion et le terrorisme, available at <https://algeria-watch.org/?p=55420>.

²⁶ CFDA, *La guerre civile en Algérie*, available at <http://www.algerie-disparus.org/disparitions-forcees/solutions-pour-un-reglement-juste-des-disparitions-forcees/>.

²⁷ Djilali Hadjadj, *Corruption et Démocratie en Algérie*, La Dispute, 1999, pp. 250-54.

²⁸ Miriam Shabafrouz, *Oil and the Eruption of the Algerian Civil War: A Context-Sensitive Analysis of the Ambivalent Impact of Resource Abundance*, German Institute of Global and Area Studies 11, January 2010, available at <https://pdfs.semanticscholar.org/f5aa/35048e435dfcb55e884b404786049bea872d.pdf>.

²⁹ Mohammed M. Hafez, *Armed Islamist Movements and Political Violence in Algeria*, 54 Middle East Journal, 2000, pp. 572-584.

leadership. Unlike the FIS and the AIS, the GIA was opposed to any form of political negotiations with the governing regime.³⁰

15. In addition to armed Islamist groups, a high number of civilian militias – comprised of non-military personnel, often trained by the army – joined the conflict; some reports estimate that more than half a million individuals joined local militias, though lower estimates put the number between 150,000 and 200,000 people.³¹

1.4.2 The authorities' response

16. The ruling regime reacted by adopting a strong military response and attributing all acts of violence to insurgents in an effort to weaken public support for any militant group. Enforced disappearances, torture and extrajudicial killings were used by the authorities against opposition forces.
17. Among other reasons, successive emergency legislations were also adopted to provide for, among others, the possibility for both military and civilian authorities, the power to place in security centres, without charge or trial, "all persons of age whose behaviour is susceptible to dangerously compromise public order and public security as well as the effective operation of the public services".³² Accordingly, between 1991 and 1995, an estimated 20,000 individuals³³ were sent to "security centres" to combat "the threat of terrorism and Islamism."³⁴
18. At the same time, the regime conducted negotiations with the FIS leadership between 1993 and 1995, none of which were successful. However, on 21 September 1997, the AIS declared a unilateral ceasefire.³⁵ The state did not officially respond to this ceasefire declaration until 1999, at which point newly elected President Abdelaziz Bouteflika³⁶ released some political prisoners and passed the Law of Civil Harmony (Law No. 99-08), which provided amnesties to members of armed groups who surrendered within six months of the law's enactment.³⁷ Additionally, members of both the AIS and the Islamic League for Preaching and Combat (*Ligue Islamique pour le Dawa et le Djihad* – LIDD) received

³⁰ Omar Ashour, *Islamist De-Radicalization in Algeria: Successes and Failures*, Middle East Institute, 1 November 2008, available at <https://www.mei.edu/publications/islamist-de-radicalization-algeria-successes-and-failures>. See also *Armed Islamist Movements and Political Violence in Algeria*, *op. cit.*, p. 576 (noting that "the GIA made it clear from the beginning that it was not the armed wing of the FIS [...] [and that] it was not pursuing a strategy that aimed for the rehabilitation of the FIS as a legal party and the resumption of the electoral process, which were the immediate goals of the FIS.").

³¹ Jacob Mundy, *Imaginative Geographies of Algerian Violence: Conflict Science, Conflict Management, Antipolitics*, 2015.

³² See *Enforced disappearances in Algeria: a crime against humanity*, *op. cit.*, p. 24.

³³ See one of the lists of the individuals imprisoned in security centres: <https://algeria-watch.org/?p=47585>

³⁴ Presidential decree No. 91-196 of 5 June 1991 proclaiming the state of siege, *Journal officiel de la République algérienne démocratique et populaire (JORA)* No. 29 from 12 June 1991 (article 4) accompanied by Executive Decree No. 91-201 setting the limits and conditions for being placed in a security centre, *JORA* No. 31 from 26 June 1991; and Presidential Decree No. 92-44 of February 1992 introducing the state of emergency, *JORA* No. 10 from 9 February 1992 (article 5). See *Enforced disappearances in Algeria: a crime against humanity*, *op. cit.*, p. 24.

³⁵ *Armed Islamist Movements and Political Violence in Algeria*, *op. cit.*, p. 590.

³⁶ President Bouteflika's election in 1999 was controversial, marked by corruption and a boycott by opposing candidates. As the favoured candidate by the Algerian military, Bouteflika's victory was virtually guaranteed prior to the election. Troops were permitted to vote in their barracks the day before the 1999 election, and the results of these votes were announced only after the rest of the vote was tallied. See Craig S. Smith, *Algerian President Overwhelmingly Wins Re-Election*, *New York Times*, 10 April 2004, available at <https://www.nytimes.com/2004/04/10/world/algerian-president-overwhelmingly-wins-re-election.html>.

³⁷ Child Soldiers International, *Global Report 2001 – Algeria*, 2001, available at <https://www.refworld.org/docid/49880619a.html>

a general amnesty exempting them from prosecution without exclusion under Presidential Decree No. 2000-03.³⁸

1.4.3 The end of the war

19. By the end of 1999, AIS began disarming its members and a reported 4,200 AIS rebels availed themselves of the general amnesty provided by the government.³⁹ Similarly, in January 2000, 22 GIA militias announced that they would participate in the ceasefire agreement.⁴⁰
20. However, violence continued throughout Bouteflika's presidency. An estimated 1,000 people were killed by armed groups during the first eight months of his tenure at the government's helm, and several waves of violence occurred after both the AIS ceasefire agreement and the expiration of the deadline for rebels to disarm under the law of reconciliation.⁴¹
21. On 29 September 2005, the Charter for Peace and National Reconciliation was adopted by referendum, without prior public debate or discussion over its content.⁴² The Charter was complemented by four implementing provisions which came into force in 2006, which strengthened the amnesty provisions introduced in 1999 and organised the compensation procedure for families of victims of enforced disappearance.⁴³ Provisions of the Charter effectively prevented all criminal proceedings against those allegedly responsible for enforced disappearances. They also prevented the opening of any inquiry into the fate of forcibly disappeared persons. Moreover, the terms of compensation offered to families of the disappeared, in exchange for a death certificate, deprived them of their right to full compensation. These measures were strengthened by a general prohibition on questioning the official version of history, as ratified by the Charter.
22. Algeria's civil war has been described by many as a "dirty war," taking place during Algeria's "dark decade,"⁴⁴ due to the extraordinary brutality and scale of violations committed. Around 200,000 people lost their lives, with hundreds of thousands more injured as a result of coordinated attacks, including massacres, rape, kidnapping, and torture, at the hands of state or state-sponsored "death squads."⁴⁵ Violence was indiscriminately used by all parties to the conflict. Many people were also displaced as a result of the conflict.⁴⁶

³⁸ Armed Islamist Movements and Political Violence in Algeria, *op. cit.*, p. 591.

³⁹ *Ibidem.*

⁴⁰ *Ibidem.*

⁴¹ *Ibidem.*

⁴² Belkacem Kolli, *Algérie, Réconciliation sur fond d'incertitudes*, RFI, 12 March 2006, available at http://www1.rfi.fr/actufr/articles/075/article_42395.asp.

⁴³ Law No. 99-08 of 13 July 1999 restoring civil concord. See Enforced disappearances in Algeria: a crime against humanity, *op. cit.*, p. 101.

⁴⁴ Sometimes also referred to as the "black decade."

⁴⁵ Eleanor Beardsley, *Algeria's "Black Decade" Still Weighs Heavily*, National Publication Radio, 25 April 2011, available at <https://www.npr.org/2011/04/25/135376589/algerias-black-decade-still-weighs-heavily>.

⁴⁶ *Ibidem.*

2 The practice of enforced disappearances during the civil war

2.1 Disappearances as a form of repression

23. Enforced disappearances were intended to eliminate opponents of the regime and instil a climate of fear throughout the country.⁴⁷ As Algeria-Watch noted, “mak[ing] people disappear also helps to intimidate the whole entourage of the victim (family, neighbours, work colleagues, friends) and produces such anxiety and paralysis that any intervention regarding the administration or any political initiative is difficult and requires an exceptional amount of courage [...] These suspect families are worried, harassed, and humiliated in every action they undertake because they are accused of supporting terrorism.”⁴⁸
24. In many cases, those who had been disappeared, but reappeared months or years later, reported having been tortured and witnessing the extrajudicial killings of fellow detainees.⁴⁹ The internment of between 10,000 to 24,000 men in camps, where they were held *incommunicado* without due process, further contributed to the silencing of dissent and the traumatising of communities across Algeria.⁵⁰ While many of these men were released and returned to their homes, often after having been ill-treated or tortured, others disappeared from the camp or shortly after their initial release.⁵¹
25. The use of enforced disappearances for the purposes of silencing opponents was also consistent with the regime’s wartime imposition of restrictions on the rights of freedom of expression, association and peaceful assembly, all of which were intended to prevent the circulation of information about the ongoing conflict.⁵²

2.2 The widespread and systematic nature of enforced disappearances

26. The Algerian authorities continue to deny the existence of a deliberate policy of enforced disappearances during the civil war,⁵³ and impute disappearances to sporadic acts of isolated officials.⁵⁴ However, experts such as Sir Nigel Rodley, former member of the HR Committee, state that the human rights violations committed in Algeria during the 1990s, including enforced disappearances, amount to “crimes against humanity” due to their widespread and systematic

⁴⁷ Rachid Mesli, *An open letter on enforced disappearances: the Algerian experience*, Open Democracy, 5 September 2016, available at <https://www.opendemocracy.net/en/north-africa-west-asia/open-letter-on-enforced-disappearances-algerian-experience/>.

⁴⁸ Algeria-Watch, *Report on the ‘Disappearances’ in Algeria*, March 1999, available at <https://algeria-watch.org/?p=3625>.

⁴⁹ *Ibidem*.

⁵⁰ Algeria-Watch, *Les Déportés des camps du Sud, une plaie qui continue de saigner*, 26 July 2010, available at <https://algeria-watch.org/?p=47590>.

⁵¹ *Ibidem* See also, Comité Justice pour l’Algérie, *Les Détentions Arbitraires: Dossier No. 4*, May 2004, https://www.algerie-tpp.org/tpp/pdf/dossier_4_detentions_arbitraires.pdf.

⁵² Human Rights Watch, *Algeria: Violations of Civil and Political Rights: A Briefing Paper for the U.N. Human Rights Committee*, August 1998, available at <https://www.refworld.org/docid/3ae6a8508.html>.

⁵³ See Enforced disappearances in Algeria: a crime against humanity, *op. cit.*, p. 69.

⁵⁴ *Ibidem*.

nature.⁵⁵ The large numbers of victims are indicative of the widespread fashion of these crimes. Enforced disappearances were also of a systematic nature: the repetition of similar patterns of arrests, violence and disappearance indicate a methodical plan designed by the state.⁵⁶

27. Conducted in the name of the fight against terrorism and subversion, the repression targeted not only Islamist armed groups, but also the civilian population, considered as the breeding ground for these armed groups. Repression was systematic, especially in working-class areas and remote and poor areas affected by terrorism, or where the FIS had been victorious in the 1991 elections. The aim of the repression was to eliminate both armed and civilian Islamist opposition.⁵⁷ While some victims were actively involved in local and national politics as FIS members, others were merely suspected by the authorities to be FIS sympathisers. Lawyers and human rights defenders acting for the families of disappeared were themselves targeted by the authorities, such as Rachid Mesli, a lawyer arrested by the civil police on 31 July 1996, secretly detained and tortured before being released.⁵⁸

2.3 Patterns of enforced disappearances

2.3.1 Mass arbitrary arrests and lack of due process

28. Enforced disappearances were preceded by arbitrary arrests, which were frequent and widespread in the 1990s. They would occur in public spaces, at the workplace, or at home. They were often carried out as part of sweeps, where soldiers blocked an area and anti-terrorist units invaded homes and arrested the men of the families.⁵⁹ Arrested individuals were forced to get into cars or military vans, sometimes blindfolded to prevent them from seeing where they were being taken.⁶⁰
29. Victims were arrested without an arrest warrant or being informed of the reason for their arrest. They were detained and interrogated without access to a lawyer or the opportunity to contact their families. Pursuant to Decree No. 92-03 on the fight against subversion and terrorism, the period of custody was extended from 48 hours to 12 days. In practice, detention could last from several weeks to several months.⁶¹ Police reports were often inaccurate or falsified, for example by failing to indicate the date of arrest or modifying it. Confessions from suspects, including those extracted under torture, were never signed by the members of the security forces who obtained the confession, and the victim was forced to sign it without reading, sometimes while blindfolded.⁶²
30. When they were brought before the prosecutor or a judge, victims were denied their due process rights. Arbitrary arrests, excessive length of custody and visible signs of torture were never investigated and victims who complained were often threatened with further torture. Security forces who accompanied the victims did

⁵⁵ Human Rights Committee, *Summary records of the review of the third periodic report of Algeria by the Human Rights Committee*, 31 October 2007, CCPR/C/SR.2495, para. 5.

⁵⁶ See Enforced disappearances in Algeria: a crime against humanity, *op. cit.*, p. 69.

⁵⁷ *Ibid.*, p. 24.

⁵⁸ Algeria-Watch, *Mesli, un avocat torturé*, 13 December 2009, available at <https://algeria-watch.org/?p=63456>.

⁵⁹ Algeria-Watch, *Algérie, La machine de mort. Un rapport sur la torture, les centres de détentions secrets et l'organisation de la machine de mort*, October 2003, p. 13.

⁶⁰ See Enforced disappearances in Algeria: a crime against humanity, *op. cit.*, p. 79.

⁶¹ See Algérie, *La machine de mort.*, *op. cit.*, p. 14.

⁶² *Ibidem.*

not hesitate to intimidate them in the courthouse if they complained and to threaten them with execution if they were released.⁶³ Complaints made by the relatives of victims after their disappearances were most often dismissed by judges or prosecutors, or were closed after years of procedure.

2.3.2 *Incommunicado* and secret detention

31. Arrests were almost always followed by periods of secret detention, during which the families started to search for their missing relatives at police stations, gendarmerie brigades, military barracks, tribunals and hospitals. Missing persons were often held in secret detention centres, where torture and executions took place.⁶⁴ While no exhaustive information is available on these detention centres, testimonies of victims, relatives and members of the security forces, provide details on the location of these centres. The DRS barracks were often used as detention centres, such as the Chateaneuf Barracks in Algiers,⁶⁵ the Ben-Aknoun Centre, or the central Belle Vue in Constantine. Head offices of the anti-terrorist brigades and some military barracks were also used as detention centres. Algeria-Watch documented 95 secret detention centres across the country in 2003; however, the list may not be exhaustive.⁶⁶
32. Testimonies indicate that disappeared persons were often transferred from one centre to another during their detention, a pattern which reveals the cooperation between different branches of the security forces in the process of disappearances.⁶⁷ After collective arrests, arrested persons were initially detained together before being divided into groups and either released, brought before the prosecutor, further detained or disappeared.

2.3.3 The practice of torture

33. Torture was systematic throughout the period of detention. Acts of torture were perpetrated to obtain confessions, to punish, and to humiliate victims. Members of the security forces who refused to perpetrate acts of torture were themselves punished and tortured.
34. Various methods of torture were used by the security forces. The most frequent torture methods were: flogging and lashing; the “chiffon” technique, whereby the victim’s mouth is filled with a cloth and soaked in water or other liquid; hanging from the ceiling; electric shocks; burning; sexual mutilation; and rape. Forms of psychological torture were also used, such as subjecting persons to insomnia; false executions; and torture in the presence of spouses and children.⁶⁸ The families of victims were often also subject to intimidation, threats, arrests and other forms of torture and ill-treatment by security forces.

2.3.4 Summary executions

35. After the final transfer of disappeared persons to unknown locations, their relatives were unable to obtain information on their whereabouts. Victims of enforced disappearance likely succumbed to torture or were subjected to extrajudicial

⁶³ *Ibid.*, p. 16.

⁶⁴ *Ibid.*, pp. 21-40.

⁶⁵ See Open letter on enforced disappearances: the Algerian experience, *op. cit.*

⁶⁶ See Algérie, La machine de mort, *op. cit.*, p. 7.

⁶⁷ See Enforced disappearances in Algeria: a crime against humanity, *op. cit.*, p. 83.

⁶⁸ *Ibid.*, pp. 18-20.

killings. Available testimonies indicate that the DRS forces were often in charge of torturing and executing victims in one of their centres.⁶⁹

36. While, in many cases, the details of their fate and the location of their bodies remain unknown to date, the HR Committee's jurisprudence on Algeria has established that the time elapsed since the disappearance of the victims, the testimonies of witnesses and former members of the security forces, as well as the systematic pattern of arrests and disappearances, constitutes strong evidence that they were executed by the state authorities, thus amounting to a violation of their right to life.⁷⁰

2.4 Perpetrators

37. The main perpetrators of enforced disappearances were members of the different branches of the state security forces involved in the fight against terrorism, as well as members of armed militias controlled by the government. The Department of Intelligence and Security (*Département du Renseignement et de la Sécurité* – DRS), created in September 1990, oversaw the fight against terrorism and subversion alongside the Algerian People's National Army (*Armée Nationale Populaire* – ANP) chief of staff. While the only forces of intervention of the DRS were around 300 men in the Special Intervention Group (*Groupe d'intervention spécial* – GIS), from 1992 the DRS created and coordinated specialised anti-terrorism units with the army, the gendarmerie and the police.⁷¹

2.4.1 The specialised anti-terrorism units working as “combined forces”

38. Active from 1992, mobile units of the army, gendarmerie and the police forces worked together in the fight against terrorism. They were the para-commando regiments of the People's National Army, the Rapid Intervention Group of the gendarmerie and the Mobile Brigades of the Judicial Police.⁷² They had large territorial jurisdiction and were deployed across the country, both in rural and urban areas. Many witnesses and families of the disappeared testified that these units were involved in the arrest and detention of civilians.⁷³ They collaborated with local ordinary units of the security forces.

2.4.2 Ordinary units of the security forces

39. Ordinary units of the police, army and gendarmerie were also involved, either on their own or in cooperation with the specialised anti-terrorism units, in arresting and detaining individuals.⁷⁴ While police forces operated mostly in urban areas, the military police (affiliated with the gendarmerie) were particularly active in rural areas, on the outskirts of cities and in the countryside. Soldiers from the ordinary troops were also involved in disappearances, particularly in the Blida province.⁷⁵

⁶⁹ See Algérie, *La machine de mort*, *op. cit.*, p. 22.

⁷⁰ See for instance *Guezout and ors (on behalf of Kamel Rakik and ors) v Algeria*, Merits, Communication No. 1753/2008, UN Doc CCPR/C/105/D/1753/2008, 19 July 2012.

⁷¹ See *Enforced disappearances in Algeria: a crime against humanity*, *op. cit.*, pp. 27-29. See also Alkarama Foundation, *Like a fire that never dies - The denial of the right to truth and justice for the families of the disappeared*, 2 February 2016, available at <https://www.alkarama.org/fr/documents/comme-un-feu-qui-ne-seteint-pas-le-deni-du-droit-la-verite-et-la-justice-des-familles-de>.

⁷² See Algérie, *La machine de mort*, *op. cit.*, pp. 7-10.

⁷³ See *Enforced disappearances in Algeria: a crime against humanity*, *op. cit.*, p. 30.

⁷⁴ *Ibid.*, pp. 33-37.

⁷⁵ *Ibid.*, p. 38.

2.4.3 Paramilitary groups

40. From 1994 onwards, communal guards (*Gardes communaux* – GC) and Self-Defence Groups (*Groupes de légitime défense* – GLD), also known as “Patriots,” operated as surge forces.⁷⁶
41. Operating mainly in the countryside and remote rural areas, the GC were established by the state and placed under the authority of the military,⁷⁷ before being dissolved in 2012.
42. The GLD were composed of individuals recruited on the basis of arbitrary criteria, acting outside the framework of law and order legislation and without training and supervision. From the end of 1995, the authorities, who had initially denied their existence or minimised their role, openly encouraged civilians to arm themselves and organise themselves into militias.⁷⁸ Additionally, the GLD received support from the media. National television and newspapers reported on the activities of the militias and praised their role in “the fight to eliminate terrorism.” Members of these militia were qualified as “rijal khuliqu lil watan” (“men born for the homeland”).⁷⁹
43. While these militias were largely autonomous, they also began to gradually participate in more operations of the army and security forces, including arrests and interrogations. They were often affiliated or closely linked to political parties, as well as to different branches of the army and security forces, or to local officials. In fact, Algerian television revealed instances of GLD members wearing army and security force uniforms and using equipment belonging to the army and security forces, including vehicles and roadblock signs.⁸⁰ Several members of the GLD acted as warlords and led retaliatory campaigns against civilians including acts of torture, summary executions, abductions followed by enforced disappearances.⁸¹
44. In January 1997, the Algerian Prime Minister signed Executive Decree No. 97-04 establishing the conditions for the exercise of self-defence action within an organised framework. It legalised the existence of the GLD and defined a framework for their activities. However, this decree omitted the obligation for militias to report on their activities and to comply with basic human rights standards.⁸²

2.5 Most affected locations and populations

45. Enforced disappearances were widespread across the whole country, except for five southern provinces, mostly desertic and less affected by the conflict.⁸³ The

⁷⁶ Canada: Immigration and Refugee Board, *Algeria: self-defense groups, also called “militias” and “patriots”, especially in the Chlef region; militia protection by the government and conditions of recruitment; ill-treatment inflicted by the militia*, 26 September 2000, available at <https://www.refworld.org/docid/3ae6ad4418.html>.

⁷⁷ See Enforced disappearances in Algeria: a crime against humanity, *op. cit.*, p. 38.

⁷⁸ Amnesty International, *La population civile prise au piège de la violence*, November 1997, p. 26, available at <https://www.amnesty.org/download/Documents/164000/mde280231997fr.pdf>.

⁷⁹ *Ibidem*.

⁸⁰ *Ibid.*, p. 27.

⁸¹ Fédération Internationale des Droits de l’Homme, *Questions et Réponses sur l’affaire Rézilane*, 6 January 2015, available at: <https://www.fidh.org/fr/regions/maghreb-moyen-orient/algerie/16730-algerie-questions-et-reponses-sur-l-affaire-relizane#Q2>. See also Charlotte Bozonnet, *Deux anciens miliciens algériens renvoyés devant la justice française*, *Le Monde*, 6 January 2015, available at https://www.lemonde.fr/international/article/2015/01/07/deux-anciens-miliciens-algeriens-renvoyes-devant-la-justice-francaise_4550720_3210.html.

⁸² See *La population civile prise au piège de la violence*, *op. cit.*, p. 28.

⁸³ See Enforced disappearances in Algeria: a crime against humanity, *op. cit.*, pp. 74-75.

most affected provinces included Algiers and Constantine, which are also the most populated areas of the country. In addition, the most affected provinces included those that were hit the hardest by political violence, such as Blida, Tipaza and Medea.⁸⁴ The urban and suburban areas in which the FIS won the 1991 elections, and where the military forces were the most present, were particularly affected.⁸⁵

46. People of all ages were subjected to enforced disappearance. According to the Collective of Families of the Disappeared in Algeria (CFDA)'s database, the youngest missing person was 14 years old when he was forcibly disappeared, and the eldest was 82. It is estimated that around 100 victims were minors. Young men, aged between 20 and 35, were the most targeted, constituting 60% of the 4,635 disappeared persons recorded by the CFDA,⁸⁶ perhaps unsurprisingly given that nearly 70% of the population was under 30 in the early 1990s. In addition, the youth played an important role in the 1988 riots and the mobilisation of the FIS in the early 1990s.
47. The disappeared belonged to all socio-professional categories. Some were educated and had a high social status (e.g. civil servants, engineers, university professors), while others were labourers or unemployed. Youth belonging to poor and working-class categories were over-represented among the victims of enforced disappearances. In fact, due to the electoral victories by the FIS in working class areas, these youths were perceived, by the security forces, as more likely to support the armed groups.⁸⁷
48. The qualitative data analysis conducted by the CFDA shows an overrepresentation of certain professions, which were monitored and targeted by the state security forces as part of the fight against terrorism.⁸⁸ Among them were retail traders, seen as potential suppliers of the Islamist armed groups; health professionals, suspected of treating terrorists or providing them with medication, soldiers and members of police forces considered as pro-Islamists and eliminated in an attempt to purge the security forces.
49. Besides these socio-professional groups, the families of persons who were wanted or had joined the *maquis* were particularly targeted by the security forces, as they were considered accomplices of the Islamist armed groups. According to the CDFA database, almost all 107 families of disappeared interviewed in Blida mentioned that they had a relative in the *maquis* at the time of the arrest of the disappeared.⁸⁹

2.6 Gender impact

50. An overwhelming majority of victims of enforced disappearances were men. The CDFA's database includes 15 missing women. Women were mainly targeted as relatives or acquaintances of wanted or suspected persons. For example, Daouia Benaziza was 68 when she was arrested on 2 June 1995 by a military security official in Constantine who had come to her house looking for one of her sons.⁹⁰ Similarly, Saida Kheroui, the sister of a wanted member of an armed Islamist group,

⁸⁴ See Time for Reckoning: Enforced Disappearances in Algeria, *op. cit.*, p. 18.

⁸⁵ See Enforced disappearances in Algeria: a crime against humanity, *op. cit.*, pp. 74-75.

⁸⁶ *Ibid.*, p. 54.

⁸⁷ *Ibid.*, pp. 60-68.

⁸⁸ *Ibidem.*

⁸⁹ *Ibid.*, p. 64.

⁹⁰ *Ibid.*, p. 54.

was arrested by intelligence agents in Algiers on 7 May 1997.⁹¹ Both disappeared after their arrest.

51. Some women were also targeted for their political and human rights activism, such as Amina Benslimane, arrested in 1994 in Algiers at the age of 28. She had taken pictures of houses destroyed by security forces and tombs of victims of extrajudicial killings, and recorded testimonies of victims. Testimonies indicated that she died under torture, but her family could obtain no official information on her fate.⁹²
52. As in other countries affected by enforced disappearances, women were most impacted as relatives of male victims of disappearances, i.e. wives, mothers, sisters or daughters.⁹³ As men were often the sole breadwinners of their households, their disappearances resulted in severe material difficulties for the women and children left behind. Many women had to enter the workforce for the first time and were forced to take low-paying and insecure jobs. Among the children of the disappeared, girls were more affected than boys by the loss of educational opportunities. In addition, female relatives of disappeared were particularly targeted by intimidation and violence by members of the security forces following the arrests.⁹⁴
53. Lastly, Algerian women have played a major role in gathering data, protesting government inaction and establishing associations of relatives (see below part 2.8).⁹⁵

2.7 Data on enforced disappearances

54. Estimates of disappeared persons at the hands of Algerian security forces between 1992 and 2000 range from 7,000 to nearly 20,000,⁹⁶ with hundreds kidnapped by non-state armed groups.⁹⁷ Some sources state that between March and September 1994, more than 100 individuals were disappeared every month.⁹⁸
55. Since the 1990s, the number of victims of enforced disappearance has been a contentious issue between the Algerian state and associations of families of victims. To this day, the authorities have failed to provide complete lists of disappeared persons and contradictory figures have been provided by different state institutions.⁹⁹

⁹¹ Algeria-Watch, *Informations sur la situation des droits humains en Algérie*, available at https://algeria-watch.org/fr/mrv/mrvdisp/cas_disparitions/fiches/fiches_i-k/kheroui_saida.htm.

⁹² Algeria-Watch, *Informations sur la situation des droits humains en Algérie*, available at https://algeria-watch.org/fr/mrv/mrvdisp/cas_disparitions/fiches/fiches_b/benslimane_amina.htm

⁹³ International Centre for Transitional Justice (ICTJ), *The Disappeared and Invisible. Revealing the Enduring Impact of Enforced Disappearance on Women*, 2015, available at <https://www.ictj.org/publication/disappeared-and-invisible-women-disappearances>.

⁹⁴ See Algérie, *La machine de mort*, *op. cit.*, pp. 18-20.

⁹⁵ ICTJ, *Only Truth Could Heal This Pain: Algerian Women Speak of Their Search for the Disappeared*, 3 August 2016, available at <https://www.ictj.org/news/algeria-women-disappeared-truth>.

⁹⁶ International Commission on Missing Persons, *Algeria*, available at <https://www.icmp.int/the-missing/where-are-the-missing/algeria/>.

⁹⁷ See *Time for Reckoning: Enforced Disappearances in Algeria*, *op. cit.*

⁹⁸ *Indépendance de l'Algérie: 1962-2012, il était une fois un demi-siècle d'épreuves*, Jeune Afrique, available at <https://www.jeuneafrique.com/140821/politique/ind-ependance-de-l-alg-rie-1962-2012-il-tait-une-fois-un-demi-si-cle-d-preuves/>. See also "Algérie: vie politique depuis 1962", *Larousse*, available at https://www.larousse.fr/encyclopedie/divers/Alg%C3%A9rie_vie_politique_depuis_1962/187072.

⁹⁹ See *Time for Reckoning: Enforced Disappearances in Algeria*, *op. cit.*, p. 17.

56. Until 1998, officials simply denied any state responsibility for the fate of missing persons. The only official figures available were the hundreds of complaints submitted by the families to the National Observatory for Human Rights (*Observatoire National des Droits de l'Homme* – ONDH).¹⁰⁰ In 1998, the authorities started to acknowledge the issue and opened offices in the country's 48 *wilayas* (provinces), to receive complaints. In 2001, the Minister of Interior declared that these offices had reviewed 4,880 cases. However, no list of names was ever published.¹⁰¹ Many families were reluctant to report disappearances to these offices as they were attached to the Ministry of Interior, which many suspected of being responsible for the disappearances. Yet, in 2003 the national gendarmerie acknowledged receiving 7,046 complaints relating to disappearances.¹⁰²
57. In 2003, the *ad hoc* Commission headed by Farouk Ksentini, the head of the National Consultative Commission for the Promotion and Protection of Human Rights (*Commission Nationale Consultative de Promotion et de Protection des Droits de l'Homme* – CNCPPDH) was created to investigate enforced disappearances. Relying on the complaints made by relatives, it concluded, in 2005, that 6,146 people disappeared between 1992 and 1998. The CNCPPDH did not have access to official archives and no list of names was published.¹⁰³ In September 2012, Ksentini, who was still heading the CNCPPDH, stated in an interview that the “exact number” of disappeared persons was 7,200.¹⁰⁴
58. Since the late 1990s, associations of victims and international NGOs have sought to compile information about disappeared persons, relying mainly on testimonies of victims' relatives and lawyers. In 1998, the National Association of Families of the Disappeared submitted a first list of 2,611 cases to the Ministry of Interior.¹⁰⁵ The same year, the CFDA submitted 477 files to the UN Working Group on Enforced or Involuntary Disappearances (WGEID).¹⁰⁶ The CFDA and SOS Disappeared (*SOS Disparus*) continued to collect data in the following years and were able to put together 4,635 individual files on the disappeared based on their families' testimonies. Between 2006 and 2010, SOS Disappeared carried out almost 1,000 individual in-depth interviews in the homes of families in 26 provinces to document the profiles of the disappeared, the circumstances of the arrests and disappearances, responsible state forces, and the steps taken by the families to seek justice.¹⁰⁷ The CFDA published the resulting database as a “Memorial” on a dedicated website,¹⁰⁸ and offered a qualitative analysis of the data in a report published in 2016.

¹⁰⁰ See Enforced disappearances in Algeria: a crime against humanity, *op. cit.*, pp. 95-96.

¹⁰¹ See Time for Reckoning: Enforced Disappearances in Algeria, *op. cit.*, p. 17.

¹⁰² Florence Beaugé, *En Algérie, aucun survivant parmi les disparus de la 'sale guerre,'* *Le Monde*, 7 January 2003, available at https://www.lemonde.fr/archives/article/2003/01/08/en-algerie-aucun-survivant-parmi-les-disparus-de-la-sale-guerre_4268047_1819218.html.

¹⁰³ Amnesty International, *A Legacy of Impunity, A Threat to Algeria's Future*, 2009, p. 28.

¹⁰⁴ Algérie Focus, *Farouk Ksentini revient sur le cas des disparus en Algérie*, 19 September 2012, available at <https://www.algerie-focus.com/2012/09/farouk-ksentini-revient-sur-le-cas-des-disparus-en-algerie/?cn-reloaded=1>.

¹⁰⁵ Algeria-Watch, *Les "disparitions" en Algérie suite à des enlèvements par les forces de sécurité*, 13 December 2009, available at <https://algeria-watch.org/?p=54728>.

¹⁰⁶ *Ibidem*. On the files submitted to the WGEID, see also Comité Justice pour l'Algérie, *Les disparitions forcées en Algérie*, May 2004, pp. 20-22.

¹⁰⁷ See Enforced disappearances in Algeria: a crime against humanity, *op. cit.*, p. 17.

¹⁰⁸ Website of the Memorial of the Disappeared in Algeria: at <http://www.memorial-algerie.org/?q=fr/node/3309/retratos/all/all/all&page=10>.

59. Since 2002, Algeria-Watch has also published and updated a database of disappeared persons on its website. It contains information about the victims, the date and place of arrest, and perpetrators of the disappearance. The first list, put together by Algeria-Watch and human rights defender, Dr Salah-Eddin Sidhoum, included more than 3,500 names. It was last updated in June 2012 and now includes a total of 4,400 missing persons. For almost 2,000 cases, an individual file provides detailed information on their identity and the circumstances of the disappearance.¹⁰⁹ The databases of Algeria-Watch and the CFDA partly overlap.
60. While reports published by international human rights organisations such as Human Rights Watch accept 7,000 as a realistic approximation, higher estimates are provided by Algerian sources, such as Algeria-Watch, which cites a figure of between 15,000 to 20,000 disappeared persons.¹¹⁰ According to the WGEID, the numbers of disappeared peaked in 1994 and 1995 – with a total of 1,048 cases – with 68.37 % of the total number of victims disappearing during those two years.¹¹¹ However, these figures represent only a part of the actual number of enforced disappearances which occurred during this period, as they are solely based on cases transmitted to the WGEID.¹¹²
61. The exact number of victims of enforced disappearances may never be known. While disappearances are by their nature difficult to count with precision, this task is even more arduous in Algeria, where the authorities remain reluctant to acknowledge their responsibility and provide information to victims' relatives and international organisations. Fears of reprisal and scepticism about the usefulness of reporting cases of disappearances have also deterred several families from doing so.

2.8 The creation of associations of families and victims

62. A constellation of victims' associations has been established in Algeria and Europe since the mid-1990s. The first group of victims' relatives emerged in the mid-1990s and held a constitutive assembly in November 1998, under the name Association Nationale des Familles de Disparus.¹¹³ While state authorities refused to grant official status to the association, it gained increasing visibility at the national level by organising protests and submitting hundreds of files to the human rights observatory and Minister of Interior.¹¹⁴
63. In parallel, the CFDA was founded in 1998 in Paris by Nassera Dutour, mother of Amine, who disappeared in 1997, to support families of victims and advocate for the international recognition of enforced disappearances in Algeria.¹¹⁵ Its efforts to alert the UN mechanisms were supported by the *Fédération internationale des ligues des droits de l'homme* (FIDH). Its Algerian branch, SOS Disparu(e)s, was established in 2001 to represent and support families of victims of enforced disappearances at a domestic level. The *Collectif and SOS-Disparu(e)s* conduct

¹⁰⁹ Website of Algeria-Watch, *Information sur la situation des droits humains en Algérie*, available at https://algeria-watch.org/fr/mrv/mrvdisp/cas_disparitions/liste_disparitions/disparitions_liste_ab_ak.htm.

¹¹⁰ *Ibidem*.

¹¹¹ See Like a fire that never dies - The denial of the right to truth and justice for the families of the disappeared, *op. cit.*, p. 17.

¹¹² *Ibidem*.

¹¹³ Association Nationale des Familles de disparus (ANFD), Communiqué, 24 November 1998, available at <https://algeria-watch.org/?p=52976>.

¹¹⁴ See Les "disparitions" en Algérie suite à des enlèvements par les forces de sécurité, *op. cit.*

¹¹⁵ Website of the Collectif des Familles de disparus: <http://www.algerie-disparus.org/>. The CFDA was founded by Ms Nassera Dutour, whose son Amine was disappeared.

research and collect data on enforced disappearances, provide moral and legal support to the victims' families, and engage in litigation at an international level. Another association, the *Coordination nationale des familles des disparus*, was established in 2005 by families of victims from Oran, Constantine, Relizane, Setif, Algiers and the Southern regions.¹¹⁶ Additionally, the *Coordination nationale des familles de disparus* collaborated with the Office of the UN High Commissioner for Human Rights and the WGEID.¹¹⁷ Thereafter, it received the support of the latter after the repression of their peaceful demonstration in 2013.¹¹⁸ Other national and local associations have been founded subsequently, such as Mish'al, the association of children of disappeared persons in Jijel, established in 2009.¹¹⁹

64. Enforced disappearances in Algeria have also been one of the main focuses of the Switzerland-based Alkarama Foundation,¹²⁰ which submitted many reports to the UN human rights mechanisms about Algeria and acted as a counsel for families of victims before the HR Committee. Its members have been repeatedly accused by the Algerian government of "supporting terrorism," leading to the arrests of its executive director in France in 2012, and legal director in Italy in 2015, on the basis of international arrest warrants issued by the Algerian authorities, which have since been dropped by Interpol.¹²¹
65. On 24 February 2006, the Coalition of victims' associations was set up by the associations of victims of armed groups (Somoud and Djazairouna), and the associations of victims of enforced disappearances by state actors (SOS Disappeared and the CFDA). The Coalition was formed to protest against the 2006 Charter for Peace and National Reconciliation and its implementing Ordinance, which granted impunity to armed groups and agents of the state. Its goal was the establishment of a Truth Commission for all victims of disappearance in Algeria, as part of a process of transitional justice. The Coalition organised several workshops between 2006 and 2010 and published its Alternative Charter for Truth, Peace and Justice in 2010

¹¹⁶ Coordination nationale des familles des disparus, Communiqué, 25 May 2005, available at <https://algeria-watch.org/?p=47695>.

¹¹⁷ Alkarama Foundation, *La Coordination nationale des familles de disparus en Algérie reçue au Haut-Commissariat des Droits de l'Homme à Genève*, July 2013, available at <https://www.alkarama.org/fr/articles/la-coordination-nationale-des-familles-de-disparus-en-algerie-recue-au-haut-commissariat>.

¹¹⁸ United Nations, Office of the United Nations High Commissioner for Human Rights, Special procedure of the Human rights Council, 20 August 2013, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=15152>.

¹¹⁹ Frontline Defenders, *Rafik Belamrania Detained*, available at <https://www.frontlinedefenders.org/en/case/rafik-belamrania-detained>.

¹²⁰ An overview of the Foundation's activities on Algeria can be found here: <https://www.alkarama.org/en/countries/algeria>.

¹²¹ Alkarama Foundation, *History*, available at <https://www.alkarama.org/en/about/history>.

3 The authorities' response and the plight of families

3.1 The authorities' failure to investigate

66. The Algerian government has consistently denied its responsibility in the practice of enforced disappearances and failed to take any meaningful steps to carry out investigations into the grave human rights abuses and possible crimes against humanity, including unlawful killings, enforced disappearances, rape and other forms of torture committed by security forces and armed groups during the Algeria's civil war.¹²²
67. In February 1992, the National Observatory for Human Rights (*Observatoire National des Droits de l'Homme* – ONDH) was created as an independent body in charge of monitoring the human rights situation in Algeria and take the necessary measures in cases of violations. In March 2001, the ONDH was replaced by the CNCPPDH.¹²³ Families' petitions to the ONDH and the CNCPPDH either remained unanswered, or responses provided lacked substantial information about the fate of the victims. In September 2003, the Algerian authorities established a commission on "disappearances," for a duration of 18 months, to serve as an intermediary between the Algerian authorities and the families of the disappeared. This commission is commonly referred to as the "ad hoc mechanism." Its mandate was to collect information about disappearance cases, to facilitate communication between the families and the authorities, and to elaborate proposals to address cases of disappearances. However, the commission had insufficient investigative powers and its head publicly excluded the criminal prosecution of those responsible. The commission's confidential report to the President has never been published.¹²⁴
68. Numerous families of victims filed complaints about their relatives' abduction in the days following their disappearances. The first complaints were generally filed with the police or the gendarmerie brigades but yielded no results.¹²⁵ Relatives also filed complaints for abduction with the local public prosecutors and the prosecutor at the Court of Algiers. Algeria's Code of Criminal Procedure states that "when an offence is brought to their attention, the criminal investigation police, acting either on instructions from the state prosecutor or on their own initiative, shall undertake preliminary inquiries."¹²⁶ However, despite renewed complaints over the years, no investigation was ever undertaken in most cases. Where investigations were undertaken, they were often summarily dismissed.¹²⁷

¹²² Amnesty International, *Report on Algeria*, 2019, available at <https://www.amnesty.org/en/countries/middle-east-and-north-africa/algeria/report-algeria/>.

¹²³ In 2016, the Commission was replaced by the National Council for Human Rights to promote, monitor and protect human rights in Algeria. See Amnesty International, *Algeria: Impunity Past and Present*, September 2016, available at <https://www.amnesty.org/download/Documents/MDE2854682016ENGLISH.pdf>.

¹²⁴ Amnesty International, *Algeria. Briefing to the Human Rights Committee*, September 2017, p. 15, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fDZA%2f31310&Lang=en.

¹²⁵ Comité Justice pour l'Algérie, *Les disparitions forcées en Algérie*, May 2004, pp. 27-31.

¹²⁶ Algeria, Code of Criminal Procedure, article 63.

¹²⁷ See *Les disparitions forcées en Algérie, op. cit.*, p. 31.

69. The case of Hacem Louddi is emblematic of the obstacles faced by families seeking justice and truth. Mr Louddi was an educator, who was arrested at his workplace by the police on 9 April 1995 and subsequently detained. His family filed a first complaint with the chief prosecutor at Bir-Mourad-Rais. A second complaint was sent to the chief prosecutor at the Court of Tizi-Ouzou, but no investigations were carried out. On 12 October 1998, the victim's spouse petitioned the chief prosecutor at the Algiers Court of Justice, and on 12 April 1999, an investigation was launched at the request of the state prosecutor. Despite witness statements about Hacem Louddi's detention, the investigation judge issued an order on 27 October 1999 for dismissal of proceedings on the grounds that the parties responsible for Hacem Louddi's disappearance were unknown.¹²⁸ The investigation was reopened twice following the victim's spouse's appeals, before being definitively closed in 2007. Louddi's relatives also submitted complaints to non-judicial bodies, such as the ONDH.
70. Furthermore, to this day, Algerian authorities are reluctant to acknowledge the existence of mass graves when they are exposed.¹²⁹ For example, after the discovery of a gravesite in Sidi Mohamed Benaouda, near Relizane,¹³⁰ Mohamed Smaïn, head of the LADDH in Rézilane, led a team¹³¹ and gathered photographic evidence of the bones and clothes found.¹³² In February 2001, he informed the media that the chief of one self-defence group and the gendarmes were trying to hide the evidence by exhuming and relocating the bodies.¹³³ According to him, these atrocities were perpetrated by the town mayor, Haj Fergane, in the mid-1990s.¹³⁴ Because Mr Smaïn spoke up to denounce the destruction of the evidence, he was charged with defamation,¹³⁵ and convicted by the court of first instance of Relizane in January 2005. The Appeals Court increased his penalty to one year in prison and a fine of 210,000 dinars.¹³⁶ He was however released after appealing to the Supreme Court.¹³⁷

3.2 The Charter for Peace and National Reconciliation

3.2.1 Enactment

71. The Algerian Constitution, which was amended in 2016,¹³⁸ does not specifically refer to enforced disappearances. Instead, it provides that the "state shall guarantee the inviolability of the human person. Specifically, any form of physical or moral violence or infringement of dignity shall be prohibited. Cruel, inhuman or

¹²⁸ Human Rights Committee, *Louddi (on behalf of Louddi) v Algeria*, Merits, Communication No. 2117/2011, UN Doc. CCPR/C/112/D/2117/2011, 25 November 2014.

¹²⁹ Dawn, *Mass grave Disappear in Algeria*, 27 January 2004, available at <https://www.dawn.com/news/349349/mass-graves-disappear-in-algeria>.

¹³⁰ See Time for Reckoning: Enforced Disappearances in Algeria, *op. cit.*, VI. Mass Graves.

¹³¹ See Mass grave Disappear in Algeria, *op. cit.*

¹³² *Ibidem*.

¹³³ See Time for Reckoning: Enforced Disappearances in Algeria, *op. cit.*, VI. Mass Graves.

¹³⁴ Algeria-Watch, *Relizane Mass Graves affair, a test case*, 13 December 2009, available at <https://algeria-watch.org/?p=3202>

¹³⁵ See Time for Reckoning: Enforced Disappearances in Algeria, *op. cit.*, VI. Mass Graves.

¹³⁶ International Federation of Human Rights, *Instrumentalisation de la justice : les victimes et leurs défenseurs sur le banc des accusés*, July 2002, available at <https://www.fidh.org/fr/regions/maghreb-moyen-orient/algerie/instrumentalisation-de-la-justice>.

¹³⁷ See Time for Reckoning: Enforced Disappearances in Algeria, *op. cit.*, VI. Mass Graves.

¹³⁸ Algeria, Constitution of 1989, Reinstated in 1996, with amendments through 2016 (English translation), available at https://www.constituteproject.org/constitution/Algeria_2016.pdf?lang=en.

degrading treatment shall be suppressed by the law.”¹³⁹ The Penal Code also contains no reference to the crime of enforced disappearance.

72. The first legal text that made reference to enforced disappearances is the Charter for Peace and National Reconciliation was adopted by referendum on 29 September 2005, and came into force in February 2006.¹⁴⁰ Part IV of the Charter is devoted to enforced disappearances.¹⁴¹ Enforced disappearances are described as “one of the consequences of terrorism”. The Charter claims that “in numerous cases”, the disappearances are “a consequence of the criminal activity of blood-thirsty terrorists”. It explicitly rejects state responsibility for the enforced disappearances: “[t]he sovereign Algerian people rejects all allegations that attribute to the state the responsibility for a deliberate phenomenon of disappearances”.

73. Three vague provisions follow this introduction:

- “The state will assume responsibility for the fate of all persons who disappeared in the context of the national tragedy and it will take the necessary measures accordingly.”
- “The state will take all relevant measures to make it possible for the families of disappeared to overcome this terrible ordeal with dignity.”
- “Disappeared persons are considered victims of the national tragedy and their relatives have a right to reparations.”¹⁴²

3.2.2 Ordinance No. 06-01

74. Ordinance No. 06-01 provides details on the scope and implementation of the Charter.¹⁴³ Because the parliament was not in session at the time, the Ordinance was adopted without parliamentary debate. Chapter 4 of the Ordinance is devoted to the question of disappeared persons:¹⁴⁴

- Section 1 (General Provisions): Disappeared persons are considered “victims of the national tragedy,”¹⁴⁵ after a police investigation establishes that they have actually disappeared.
- Section 2 (Procedure for establishing death certificates): A statement of disappearance will be granted to the relatives of disappeared persons by the police after investigation. The relatives can be granted a death certificate by the tribunal through a legal action initiated within six months after receiving this statement.
- Section 3 (Financial Compensation): The state will pay a financial compensation to the families of the victims of the national tragedy.¹⁴⁶ This compensation excludes any other compensation resulting from the civil responsibility of the state.¹⁴⁷

75. Furthermore, Ordinance No. 06-01 grants blanket immunity from prosecution to security forces and state-armed militia. Article 45 states that “[n]o legal proceedings may be initiated against an individual or a collective entity, belonging

¹³⁹ Article 40 of the 2016 Algerian Constitution.

¹⁴⁰ Rafael Bustos, *The Algerian National Reconciliation Referendum of 2005*, Mediterranean Politics, 2006, pp. 119-121.

¹⁴¹ Full text in French available at <https://algeria-watch.org/?p=26944>.

¹⁴² *Ibidem*.

¹⁴³ Algeria, Ordinance No. 06-01, 27 February 2006 (in French), available at

<http://www.interieur.gov.dz/index.php/fr/dossiers/168-la-charte-pour-la-paix-et-la-reconciliation-nationale.html>.

¹⁴⁴ Articles 27 to 39.

¹⁴⁵ Article 27.

¹⁴⁶ Article 37.

¹⁴⁷ Article 38.

to any component whatsoever of the defence and security forces of the Republic, for actions conducted for the purpose of protecting persons and property, safeguarding the nation or preserving the institutions of the Democratic and Popular Republic of Algeria. The competent judicial authorities are to summarily dismiss all accusations or complaints.” This provision effectively prevented the families of victims of enforced disappearances from pursuing legal proceedings before domestic courts.

76. Moreover, relatives willing to pursue litigation and advocacy find themselves at risk of prosecution under article 46 of the Ordinance. This provision states that “anyone who, by speech, writing or any other act, uses or exploits the wounds of the National Tragedy to harm institutions of the Democratic and Popular Republic of Algeria, to weaken the state, or to undermine the good reputation of its agents who honourably served it, or to tarnish the image of Algeria internationally, shall be punished by three to five years in prison and a fine of 250,000 to 500,000 DA.” This provision constitutes an additional impediment to the fulfilment of the right of victims of human rights violations, by state agents, to receive redress or reparations for the harm suffered.
77. To date, one individual has been prosecuted under article 46 of the Charter. Mr Abdullah Benaoum, a human rights defender and social media activist,¹⁴⁸ was arrested on 20 March 2018, following his sentencing *in absentia* to two years in prison and a fine of 200,000 Algerian dinars on charges of “incitement to an illegal gathering”, “participating in a prohibited gathering”, “insulting a public institution”, “publication of materials with intent against national interests”, “insulting the president of the Republic”, “publication of personal information” in relation to publications on social media on military commanders, and violating article 46 of Ordinance No. 06-01. On 6 June 2018, his sentence was upheld on appeal. On 3 June 2019, the Criminal Court of Ghilizan granted him conditional release.

3.2.3 Compensation

78. Following the promulgation of the Ordinance, families of the victims were encouraged by the authorities to apply for a death certificate in order to obtain compensation, as provided for by chapter IV, section 3, of the Ordinance. In numerous instances, families were harassed because they refused to accept compensation from the state in exchange for accepting a death certificate for their still-missing relatives.¹⁴⁹ Families who applied were granted, by the gendarmerie or the police, an official certificate attesting to a disappearance “under the circumstances arising from the national tragedy.” However, in most cases, these certificates were issued without an investigation of the facts.¹⁵⁰
79. On this matter, the UN Committee against Torture (CAT) expressed its concerns and characterised the compensation process as “a form of inhuman and degrading treatment for such persons laying them up to additional victimization.”¹⁵¹

¹⁴⁸ Frontline Defenders, *Abdullah Benaoum facing charges for human rights work*,

<https://www.frontlinedefenders.org/en/case/abdullah-benaoum-facing-charges-human-rights-work>.

¹⁴⁹ Human Rights Watch, *Events of 2016, 2017*, available at <https://www.hrw.org/world-report/2017/country-chapters/algeria>.

¹⁵⁰ Human Rights Committee, *Khirani (on behalf of Ouaghliissi and ors) v Algeria*, Merits, Communication No. 1905/2009, UN Doc CCPR/C/104/D/1905/2009, 26 March 2012, para. 2.7; *Mihoubi (on behalf of Mihoubi) v Algeria*, Merits, Communication No. 1874/2009, UN Doc CCPR/C/109/D/1874/2009, 7 January 2014, para. 2.9; *Louddi (on behalf of Louddi) v Algeria*, *op. cit.*, para. 2.7.

¹⁵¹ Committee against Torture, *Concluding Observations of the Committee against Torture*, UN Doc CAT/C/DZA/CO/3, May 2008, para. 13.

Compensations were conditioned to the acceptance of a declaration of death. This resulted in the victims having to forsake their right to truth on the whereabouts of their loved ones. The CAT also stated that the compensation process did not exempt authorities from their investigative and prosecutorial obligations. Some families refused to apply for a death certificate without receiving detailed information about the victims' fate.¹⁵² According to statistics from the Ministry of Interior, a large majority of families who applied were entitled to compensation: 8,023 disappearances were reported, 6,774 cases examined, and 5,704 cases approved for compensation. A total of 371,459,390 DA was paid out as compensation to the victims, in addition to a total of more than 1,3 billion dinars in the form of monthly pensions.¹⁵³

3.3 Further impediments to the families' right to truth

80. In addition to the hurdles posed by the enactment of Ordinance No. 06-01, restrictions to the rights to freedom of expression, association, and peaceful assembly, as well as the lack of independence of the judiciary, limit the ability of Algerians to discuss abuses committed during the civil war, express political dissent or dissatisfaction, disseminate information perceived as contrary to the government's interests, or seek redress.
81. A series of presidential decrees promulgated during the civil war authorised the government to restrict the rights of individuals to form associations, gather, move freely without prior permission, or criticise the government and its institutions.¹⁵⁴ Though the Algerian government lifted the 1992 state of emergency on 24 February 2011,¹⁵⁵ significant restrictions remain, and the rights to freedom of expression, association, and peaceful assembly, guaranteed under the Constitution,¹⁵⁶ continue to be severely undermined.

3.3.1 Freedom of association

82. Law No. 12-06 of 2012 requires all associations, including NGOs, to re-file registration applications and obtain a registration receipt from the Ministry of Interior before they can legally operate.¹⁵⁷ To date, major human rights organisations which submitted compliance applications in January 2014, have still not obtained receipts certifying their legal existence. Without receipts, these organisations cannot open a bank account, rent an office, or hire a public hall for a meeting, undermining their ability to operate.¹⁵⁸ Organisations may not be affiliated with political parties, must obtain permission to receive foreign funds, and must have a pre-existing "cooperation agreement" to conduct advocacy with any international organisations or foreign entities.¹⁵⁹

¹⁵² Human Rights Committee, *Guezout and ors (on behalf of Kamel Rakik and ors) v Algeria*, Communication No. 1753/2008, UN Doc CCPR/C/105/D/1753/2008, 19 July 2012, para. 2.6.

¹⁵³ *Ibid.*, para. 4.3.

¹⁵⁴ *Ibidem.*

¹⁵⁵ *Algeria Ends 19-year-old state of emergency*, BBC News, 24 February 2011, available at <https://www.bbc.com/news/world-africa-12573659>.

¹⁵⁶ Euro-Mediterranean Human Rights Network, *The Lifting of the State of Emergency: A Game of Smoke and Mirrors*, 2011, available at <http://www.algerie-disparus.org/app/uploads/2015/12/PUBLICATIONS-2011-REMDH-LEVEE-DE-LETAT-DURGENCE-ENG.pdf>.

¹⁵⁷ See Algeria: Events of 2016, *op. cit.*

¹⁵⁸ *Ibidem.*

¹⁵⁹ International Center for Not-For-Profit Law, *Civic Freedom Monitor: Algeria*, available at <http://www.icnl.org/research/monitor/algeria.html>.

83. Associations representing the families of the disappeared are systematically denied registration, depriving them of platform to jointly advocate for their grievances. Members of associations that are “non-accredited, suspended, or dissolved” risk prison sentences of up to six months for conducting activities in the associations’ names.¹⁶⁰ Moreover, the Algerian authorities continue to deny international human rights organisations entry to conduct research missions.¹⁶¹
84. Restrictions on the ability of NGOs to operate legally, as well as laws that allow the authorities to suspend associations if their work “interferes with the internal affairs of the state or violates national sovereignty,” significantly hinders investigations into, or discussion of, events that occurred during the civil war (and ongoing abuses) and perpetuate the repression of dissenting voices.¹⁶²
85. Most recently, on 22 April 2020, the Algerian government presented Law No. 20-06 amending the Penal Code to the parliament.¹⁶³ In the context of the COVID-19 pandemic, the government chose to opt for a so-called “restricted” parliamentary debate. Parliamentarians approved the text and the law entered into force on 29 April 2020. The text introduces into the Criminal Code article 95 *bis*, which sanctions with “imprisonment of five to seven years and a fine of DA 500,000 to DA 700,000 DA, anyone who receives funds, a gift or an advantage, by any means, from a State, an institution or any other public or private body or from any legal or natural person, inside or outside the country, to carry out or incite to carry out acts likely to undermine the security of the State, the stability and normal functioning of its institutions, national unity, territorial integrity, the fundamental interests of Algeria or public security and order. The penalty shall be doubled when the funds are received within the framework of an association, group, organisation or agreement, regardless of its form or name.” This provision provides the authorities with excessive power to prosecute activists and human rights defenders receiving foreign funding if they consider that their peaceful advocacy activities undermine the “normal functioning of institutions” or “national unity”.

3.3.2 Freedom of peaceful assembly

86. Algeria’s Constitution states that “the right to peaceful assembly is guaranteed within the framework of the law, which sets forth how it is to be exercised.”¹⁶⁴ However, in practice, Algerian authorities routinely violate the right to freedom of assembly.
87. In 1991, Law No. 89-28 on Public Meetings and Demonstrations was promulgated. Its successor, Law No. 91-19, similarly precludes Algerians from exercising their right to assemble. The law prohibits any meetings that “oppose national fundamental principles” or harm the “symbols of the revolution of 1 November, the public order or public morals” – a provision that grants the government broad discretion in prohibiting public gatherings.¹⁶⁵ Finally, the law imposes potential criminal penalties for those who participate in unauthorised demonstrations,

¹⁶⁰ See Algeria: Events of 2016, *op. cit.*

¹⁶¹ Human Rights Watch, *Algeria*, available at <https://www.hrw.org/middle-east/n-africa/algeria>.

¹⁶² Human Rights Watch, *Algeria: Bouteflika Resignation an Opening for Rights*, 9 April 2019, <https://www.hrw.org/news/2019/04/09/algeria-bouteflika-resignation-opening-rights>.

¹⁶³ MENA Rights Group, *Algeria : Penal code amendments restrict freedoms of expression and association*, 2 July 2020, available at <https://menarights.org/en/articles/algeria-penal-code-amendments-restrict-freedoms-expression-and-association>.

¹⁶⁴ Article 49 of the 2016 Algerian Constitution (see: http://confinder.richmond.edu/admin/docs/local_algeria.pdf).

¹⁶⁵ See Civic Freedom Monitor: Algeria, *op. cit.*

including possible prison sentences – from three months to a year – or fines between 3,000 and 15,000 Algerian dinars, or both.¹⁶⁶

88. Since 2001, an indefinite blanket ban on demonstrations in Algiers has been consistently enforced with very few exceptions. Algerian authorities have mobilised large numbers of police to thwart demonstrations and detain participants, usually holding them for a few hours before releasing them.¹⁶⁷ Authorities have also restricted the right to peaceful assembly even in private spaces indoors.¹⁶⁸
89. Families of victims, including numerous women, have been the most visible in demonstrations regularly organised in Europe and at the Wednesday protests held in Algiers, inspired by the Argentinian mothers of the Plaza de Mayo.¹⁶⁹ They have however been regularly targeted by the authorities, intimidated, beaten and arrested during demonstrations.¹⁷⁰

3.3.3 Freedom of expression

90. The Algerian government has used criminal prosecutions to punish individuals for exercising their right to freedom of opinion and expression, and the authorities have prosecuted a number of Algerian citizens for speech critical of the government.¹⁷¹
91. In 2012, the government enacted the Information Code (Law No. 12-05), which permits the free practice of news journalism so long as it respects “national identity, the cultural values of society, national sovereignty and national unity, as well as the requirements of national security, national defence, public order, and the country’s economic interests, among others.”¹⁷² Under the Information Code, all news publications must obtain prior approval by the governmental media

¹⁶⁶ *Ibidem*.

¹⁶⁷ For example, see Human Rights Watch, *Algeria: Police Renew Crackdown on Mass Protests*, 19 April 2019, <https://www.hrw.org/news/2019/04/19/algeria-police-renew-crackdown-mass-protests>.

¹⁶⁸ See Algeria: Events of 2016, *op. cit.*

¹⁶⁹ *Ibidem*.

¹⁷⁰ For example, on 29 September 2016, a peaceful gathering of relatives of disappeared was brutally suppressed by the police, resulting in the arrest of 27 persons, all of whom were kept several hours in custody before being released. See FIDH, *Algérie: Arrestation et libération de Mme Nassera Dutour et de plus d'une vingtaine de manifestants pacifiques*, 12 October 2016, available at <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/algerie-arrestation-et-liberation-de-mme-nassera-dutour-et-de-plus-d>.

¹⁷¹ For example, in January 2018, human rights defender Hassan Bouras was released after a court reduced his one-year prison term to a six-month suspended sentence. Police had arrested him for posting a video on the YouTube channel alleging corruption among high-ranking officials in the city of El Bayadh. See: Frontline Defenders, *Hasan Bouras*, available at <https://www.frontlinedefenders.org/en/profile/hassan-bouras>. In two additional cases, the courts prosecuted cases on trumped-up charges against human rights lawyers. In another case, in March 2018, a court in Ghardaia referred human rights lawyer Salah Dabouz to trial in relation to comments he made on television about unrest in Ghardaia and for allegedly carrying a computer and camera during a visit to detained activists. The court had kept him under judicial supervision from July 2016 until March 2017, forcing him to travel more than 600km twice a week to report to the court in Ghardaia from his home in Algiers. Similarly, in April 2018, the investigative judge at a court in Medea transferred a case against human rights lawyer Nouredine Ahmine to a court in Ghardaia for trial on charges of “insulting a public institution” and “falsely” reporting an offence. The charges related to a complaint of torture that he had filed, apparently on behalf of someone else, in 2014.

¹⁷² *Ibidem*.

regulatory authority.¹⁷³ Violations of the law could result in fines of up to 500,000 dinars.¹⁷⁴

92. Furthermore, Law No. 20-06 amending the Penal Code increased the penalties provided for in article 144 of the Criminal Code.¹⁷⁵ From now on, “anyone who, with the intention of violating their honour, delicacy or the respect due to their authority, insults a magistrate, civil servant, public officer, commander or law enforcement officer, either by words, gestures, threats, sending or handing over any object whatsoever, or by writing or drawing not made public” shall be liable to a prison sentence ranging from six months to three years, as opposed to two months to two years previously.
93. The text also introduced article 196 *bis* into the Criminal Code,¹⁷⁶ which punishes with “imprisonment for one to three years and a fine of DA 100,000 to DA 300,000, anyone who wilfully disseminates or propagates, by any means, to the public false or slanderous information or news likely to undermine public security or order. In the event of a repeat offence, the penalty shall be doubled.” This provision, and the lack of a definition of “false information,” gives the authorities disproportionate and discretionary power to suppress content deemed critical or controversial.

3.3.4 The lack of independence of the judiciary

94. The executive power remains a preponderant actor in the Algerian justice system. Despite the security of tenure that judges are supposed to enjoy,¹⁷⁷ the executive power has a predominant role in their appointment and in the management of their careers.¹⁷⁸ According to Organic law No. 04-11 of 6 September 2004 on the organisation of the judiciary, senior judges can only be appointed by a presidential decree and the public prosecution falls under the umbrella of the Minister of Justice. Judges may be subjected to disciplinary proceedings in case of breaches of their professional obligations.¹⁷⁹
95. In addition, the Judiciary’s High Council (*Conseil supérieur de la Magistrature* – CSM), established to guarantee judicial independence,¹⁸⁰ is placed under the control of the executive branch. The CSM is presided by the President of the Republic,¹⁸¹ with the Minister of Justice as Vice-President.¹⁸² As such, the executive power is in charge of the agenda and of the direction of all CSM meetings,¹⁸³ allowing it to prevent debate on disruptive issues. Judges are also appointed by the Minister of Justice after deliberation of the CSM. In this regard, the National Union of Magistrates (*Syndicat national des magistrats* – SNM) has stated that the interference of the executive was an impediment to the rule of law and called for

¹⁷³ See Civic Freedom Monitor: Algeria, *op. cit.*

¹⁷⁴ Freedom House, *Freedom of the Press 2016: Algeria*, 2016, available at <https://www.justice.gov/eoir/page/file/1183656/download>.

¹⁷⁵ See Algeria: Penal code amendments restrict freedoms of expression and association, *op.cit.*

¹⁷⁶ *Ibidem.*

¹⁷⁷ *Ibidem.*

¹⁷⁸ Boubchir Mohand Amokrane, *Il n’y a réellement de pouvoir dans l’ordre judiciaire que le pouvoir exécutif*, El Watan, 8 August 2011, available at <https://www.elwatan.com/archives/idees-debats/il-ny-a-reellement-de-pouvoir-dans-lordre-judiciaire-que-le-pouvoir-executif-08-08-2011>.

¹⁷⁹ Article 60 of the Statute of the Judiciary.

¹⁸⁰ Article 62(2) of Constitution of 1963.

¹⁸¹ Article 154 of the Constitution of 1996.

¹⁸² Article 3 of Organic Act No. 04-12 of 6 September 2004.

¹⁸³ Article 10 of Rules of Procedures of the High Council of Judiciary.

reforms to the judicial system.¹⁸⁴ It is worth noting that the SNM suffers from pressure from the executive power, which can also lead to retaliations (e.g. the case of Mohamed Ras Elaine whose declarations in the press resulted in his dismissal).¹⁸⁵

96. In 2018, the HR Committee has expressed concern over such interference in the decisions of judges and public prosecutors as well as on reports of collective and mass compulsory retirements of the latter,¹⁸⁶ and found that judicial independence was still not sufficiently guaranteed in Algeria.¹⁸⁷

¹⁸⁴ Algeria-Watch, *Indépendance de la justice: les magistrats haussent le ton*, 21 September 2019, available at <https://algeria-watch.org/?p=72594>.

¹⁸⁵ L.B., *La justice a été violée*, Liberté Algérie, available at <https://www.liberte-algerie.com/archive/la-justice-a-ete-violee-8536/print/1>.

¹⁸⁶ Human Rights Committee, *Concluding Observations on the fourth periodic report of Algeria*, UN Doc CCPR/C/DZA/CO/4, 17 August 2018, paras 39 and 40.

¹⁸⁷ *Ibidem*.

4 Enforced disappearances before international human rights mechanisms

4.1 Ratification of international human rights treaties

97. Under the Algerian Constitution, international treaties take precedence over domestic law.¹⁸⁸ The Constitutional Council established that once it has been ratified and published, any convention becomes part of the domestic law, and acquires an authority that supersedes that of the law.¹⁸⁹ The precedence of international treaties ratified by Algeria may be directly relied upon by any Algerian citizen before domestic jurisdictions.
98. However, the HR Committee noted in 2018 that, in practice, the International Covenant on Civil and Political did not always take precedence over national laws and recommended that Algeria should take measures to ensure the precedence of international treaties and raise awareness among judges, prosecutors and lawyers.¹⁹⁰
99. Algeria is a party to the following international human rights treaties:
- The International Covenant on Civil and Political Rights (ICCPR), ratified on 12 September 1989;
 - The Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (without the Optional Protocol) (UNCAT), ratified on 12 September 1989;
 - The Convention on the Elimination of all forms of Discrimination against Women (CEDAW), ratified on 22 May 1996;
 - The Convention on the Rights of the Child (CRC), ratified on 16 April 1993;
 - The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (CMW), ratified on 21 April 2005.¹⁹¹
100. Algeria has accepted the jurisdiction of the HR Committee and CAT to examine individual complaints after it has ratified the Optional Protocol to the ICCPR and accepted the individual complaints procedure under article 22 UNCAT on 12 September 1989. However, the authorities have failed to cooperate with these bodies or to implement their decisions and recommendations.¹⁹²
101. Algeria has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), which it signed in 2007. It has also not ratified the Rome Statute of the International Criminal Court.

¹⁸⁸ Article 150 of the Constitution.

¹⁸⁹ Constitutional Council, Decision, 20 August 1989, mentioned in Algeria's third periodic report to the CAT. See CAT, Consideration of reports submitted by state parties under Article 19 of the Convention, Algeria, 16 January 2006, UN Doc CAT/C/DZA/3, para. 45.

¹⁹⁰ See 2018 Concluding Observations of the Human Rights Committee, *op. cit.*, paras 5 and 6.

¹⁹¹ Human Rights Committee, Ratification status for Algeria, available at: https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=3&Lang=EN.

¹⁹² See 2018 Concluding Observations of the Human Rights Committee, *op. cit.*, para. 7.

4.2 Observations and recommendations of UN bodies

4.2.1 Universal Periodic Review (UPR)

102. Enforced disappearances and impunity were addressed in several submissions made by civil society organisations during the third cycle of the UPR.¹⁹³
103. In May 2017, several UN Member States called on Algeria to ratify the ICPPED.¹⁹⁴ This recommendation had already been made in the context of the previous UPR in 2012.¹⁹⁵

4.2.2 Human Rights Committee

104. In August 2018, the HR Committee expressed its deep concern with regard to article 45 of Ordinance No. 06-01, which precludes any kind of effective remedy for victims of violations committed by law enforcement personnel, including the army. Algeria was asked to take steps to ensure that disappeared persons and their families have access to an effective remedy and that thorough and independent investigations be launched into all allegations of enforced disappearance.¹⁹⁶ The HR Committee also explained that Algeria should repeal article 46 of Ordinance “inasmuch as it impedes the freedom of expression and infringes the right of all to have access, both domestically and at the international level, to an effective remedy against human rights violations.”¹⁹⁷ The HR Committee also recommended that Algeria guarantee access to truth through means such as exhumation of unmarked graves and DNA testing; that it organises a country visit for the WGEID; and that it take all necessary action to ratify the ICPPED.¹⁹⁸

4.2.3 Committee against Torture

105. In May 2008, the CAT recommended the amendment of article 45 of Ordinance No. 06-01.¹⁹⁹ The CAT stated that this article should specify that waivers of prosecution should not apply under any circumstances to crimes such as torture, including rape, and enforced disappearance. It asked that Algeria take all necessary steps to guarantee that past or recent crimes of this nature be investigated systematically and impartially, that the perpetrators be prosecuted and punished accordingly, and the victims be adequately compensated.²⁰⁰ It further expressed particular concern about the lack of investigation of enforced disappearances and the impunity of perpetrators, noting that the *ad hoc* National Commission on Missing Persons failed to publish its final report. Members of the CAT also invited Algeria to investigate each case and publish the names of the missing persons registered since 1990. It also recommended that Algeria abolish the obligation of families to certify the death of the missing person in order to receive compensation; and that the families receive adequate compensation and the necessary psychological,

¹⁹³ See Alkarama, *Universal Periodic Review: Algeria, Third cycle, Submission to the summary of stakeholders' information, op. cit.*, paras 23-24. See also Algerian Civil Society Coalition, *Report for the Universal Periodic Review of Algeria, Third Cycle*, September 2016, paras 51-67.

¹⁹⁴ Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Algeria, A/HRC/36/13*, 19 July 2017.

¹⁹⁵ Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Algeria, A/HR C/21/13*, 5 July 2012, para. 129/6.

¹⁹⁶ See 2018 Concluding Observations of the Human Rights Committee, *op. cit.*, para. 11.

¹⁹⁷ *Ibid*, para. 14.

¹⁹⁸ *Ibid*, para. 30.

¹⁹⁹ See 2008 Concluding Observations of the Committee against Torture, *op. cit.*, para. 11.

²⁰⁰ *Ibidem*.

social and financial support.²⁰¹ Algeria's fourth periodic report to the CAT, which was due in 2012, has not yet been submitted by the authorities.

4.2.4 Working Group on Enforced or Involuntary Disappearances

106. In 2018, the WGEID expressed regret that it had not been allowed to conduct a visit to Algeria, despite an official invitation made in 2014.²⁰² 3,282 cases of enforced or involuntary disappearances were reported to the Working Group between 1980 and 2019, among which only 29 were clarified by the government or other sources.²⁰³

4.3 Individual communications before the Human Rights Committee

107. Between 2006 and 2018, the HR Committee issued 38 decisions about cases of enforced disappearances that occurred in Algeria in the 1990s. In all cases, the Committee found that Algeria was responsible for multiple violations of its substantial and procedural obligations under the ICCPR. Algerian cases have significantly contributed to shaping the jurisprudence on enforced disappearances.

4.3.1 Admissibility

108. Most cases communicated to the HR Committee had previously been reported to the WGEID. While the Optional Protocol provides that the same matter should not be examined under another procedure of international investigation or settlement,²⁰⁴ the HR Committee considers that the WGEID is an extra-conventional mechanism falling outside of the scope of this provision. For this reason, the Committee rejected this argument as a ground for inadmissibility.²⁰⁵

109. Despite the clear case law of the HR Committee in cases of enforced disappearance, the authorities have systematically referred to the 2005 Charter to challenge the admissibility of individual complaints.²⁰⁶ However, the HR Committee has consistently rejected Algeria's assertion that the communications were inadmissible according to the Charter for Peace and National Reconciliation."

110. Algeria repeatedly submitted to the HR Committee a "background memorandum on the inadmissibility of communications [...] in connection with the implementation of the Charter for Peace and National Reconciliation". The memorandum, which was drafted in 2009 to respond to cases of disappearances filed before the WGEID, asserts the authorities' refusal to address cases individually.²⁰⁷ On the contrary, the state affirms that a case-by-case approach with the UN mechanisms, "does not reflect the internal socio-political and security

²⁰¹ *Ibid.*, paras 12-13.

²⁰² Human Rights Council, *Report of the Working Group on Enforced and Involuntary Disappearances*, A/HRC/39/46, 30 July 2018, para. 81.

²⁰³ Human Rights Council, *Report of the Working Group on Enforced and Involuntary Disappearances*, A/HRC/42/40, 30 July 2019, Annex II, p. 24.

²⁰⁴ Article 5(2)(a).

²⁰⁵ See for instance: Human Rights Committee, *El Boathi v Algeria*, Merits, Communication No. 2259/2013, UN Doc CCPR/C/119/D/2259/2013, 16 May 2017, para. 6.2.

²⁰⁶ See Alkarama Foundation, *Universal Periodic Review: Algeria, Third cycle, Submission to the summary of stakeholders' information*, *op. cit.*, paras 9 and 10.

²⁰⁷ See *Like a fire that never dies - The denial of the right to truth and justice for the families of the disappeared*, *op. cit.*, p. 27.

context in which the alleged facts took place.” The government further states that none of the disappearances can be attributed to state agents, and instead categorises individuals into six scenarios:²⁰⁸

1. The missing person is said to have “gone into hiding on his own initiative to join armed groups”;
2. The person was reportedly “arrested by the security services” and then released, which “gave him the opportunity to go into hiding”;
3. The person was allegedly abducted by armed groups who usurped the uniforms or identification documents of police or military personnel and thus is “wrongly assimilated” to state agents;
4. The person allegedly “took the initiative to abandon his relatives” because of “personal problems or family disputes”;
5. The person is said to be “a wanted terrorist and was killed and buried in the bush” by “rival armed groups”;
6. These people would live “under false identities created thanks to an incredible network of falsification of documents”.

4.3.2 Burden of proof

111. From its early decisions in *Bousroual v. Algeria* and *Boucherf v. Algeria* (2006), the HR Committee has consistently maintained that the burden of proof cannot rest on the author of the communication alone, considering that the author and the state party do not always have equal access to evidence, and that, frequently, the state party alone has access to the relevant information.²⁰⁹ For instance, in the *Bousroual* case, submitted on behalf of Mr Saker, considering that the victim was abducted from his home by state agents, and that the state failed to provide legal grounds for his detention and to provide information as to his subsequent fate, the HR Committee concluded that the detention as a whole was arbitrary and that the state party failed to protect the life of Mr Saker.²¹⁰ To this end, it relied on its jurisprudence in Latin American cases, particularly in relation to Uruguay. The Committee found that the state party has the duty to investigate in good faith all allegations of violations and to provide all available information to the HR Committee.²¹¹ Where the allegations are supported by credible evidence submitted by the author and where further clarification depends on information exclusively in the hands of the state party, the Committee established that it may consider the author’s allegations as adequately substantiated unless the state party submits satisfactory evidence and explanation.²¹²

4.3.3 Violations

112. In the cases decided between 2006 and 2018, the HR Committee found a combination of the following violations of the ICCPR:
- i) Right to an effective remedy (art. 2(3));
 - ii) Right to life (art. 6);

²⁰⁸ *Ibidem*.

²⁰⁹ Human Rights Committee, *Bousroual (on behalf of Saker) v Algeria*, Merits, Communication No. 992/2001, UN Doc CCPR/C/86/D/992/2001, 24 April 2006, para. 9(4); *Boucherf (on behalf of Boucherf) v Algeria*, Merits, Communication No. 1196/2003, UN Doc CCPR/C/86/D/1196/2003, 27 April 2006, para. 9(4).

²¹⁰ *Bousroual* (on behalf of Saker) v Algeria, *op. cit.*, paras 9.5 and 9.11.

²¹¹ *Ibid.*, para. 9.4.

²¹² *Ibidem*.

- iii) Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (art. 7);
- iv) Right to liberty and security of the person (art. 9);
- v) Right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (art. 10);
- vi) Right to recognition everywhere as a person before the law (art. 16);
- vii) Right not to be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation (art. 17(1)).

113. The HR Committee considered violations with regard to both the disappeared persons and to their families. Family members were considered victims of violations of article 7, due to the anguish and distress caused by the disappearance of their relatives.²¹³ The Committee also found violations of article 2(3) and article 10 with regard to the missing persons and their families, as a result of Ordinance No. 06-01.

114. It is worth highlighting that the HR Committee's jurisprudence on the violation of article 6 (right to life) in cases of enforced disappearance has gradually evolved. In the first cases, state responsibility was recognised only in cases of proven or presumed death.²¹⁴ In 2011, in *Aouabdia*, the HR Committee found a violation of article 6 read in conjunction with article 2(3), while the death of the victim had not been established.²¹⁵ In 2012, the *Guezout* decision relied on a broader interpretation of article 6, finding that the state's failure to protect life constituted a direct violation of article 6(1) ICCPR. The Committee recalled that "in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge that fact or by concealment of the fate or whereabouts of the disappeared persons, removes such persons from the protection of the law and places their lives at serious and constant risk, for which the state is accountable."²¹⁶ The HR Committee has followed this interpretation to find direct violations of article 6 in its subsequent decisions on cases of enforced disappearances.²¹⁷

4.3.4 Recommendations contained in the HR Committee's views

4.3.4.1 Individual recommendations

115. In all cases, the HR Committee ruled that Algeria should provide the author and his/her family with an effective remedy, in accordance with article 2(3) of the ICCPR. The remedy must include:

- Carrying out an effective investigation into the disappearance of the victim and providing the family with detailed information about its results;
- Releasing the victim immediately if he/she is still being held *incommunicado*;
- If the victim is deceased, returning his/her remains to his/her family;

²¹³ See for instance: Human Rights Committee, *Benaziza (on behalf of Benaziza and ors) v Algeria*, Merits, CCPR/C/99/D/1588/2007, 26 July 2010, para. 9.6.; *Grioua (on behalf of Grioua) v Algeria*, Merits, Communication No. 1327/2004, UN Doc CCPR/C/90/D/1327/2004, 10 July 2007, para. 7.7.

²¹⁴ Human Rights Committee, *Bleier v. Uruguay*, Communication No. 30/1978, UN Doc CCPR/C/OP/1, 29 March 1982.

²¹⁵ Human Rights Committee, *Zarzi (on behalf of Aouabdia and ors) v Algeria*, Merits, Communication No. 1780/2008, UN Doc CCPR/C/101/D/1780/2008, 22 March 2011.

²¹⁶ *Guezout and ors (on behalf of Kamel Rakik and ors) v Algeria*, *op. cit.*, para. 8.4.

²¹⁷ Human Rights Committee, *Larbi v Algeria*, Merits, Communication No. 1831/2008, UN Doc CCPR/C/108/D/1831/2008, 26 July 2013, para. 8(4); See *Mihoubi v Algeria*, *op. cit.*, para. 7(4).

- Prosecuting and holding those responsible for the violations committed to account; and
- Providing adequate compensation to the family, and the victim if he/she is still alive.

4.3.4.2 General recommendations

116. In all cases, Algeria was reminded of its obligation to take steps to prevent similar violations in the future. In particular, the HR Committee drew attention to the terms of Ordinance No. 06-01 and underlined that the latter should not impede the enjoyment of the right to an effective remedy for victims of torture and enforced disappearances. In cases such as *Khirani, Mihoubi* and *Guezout*, members of the Committee repeatedly criticised this approach in their separate opinions, considering that, since Ordinance No. 06.01 breached article 2(2) of the ICCPR, the Committee should have specifically recommended that Algeria repeal or review it.²¹⁸ This view has been adopted by the HR Committee in more recent cases. Since *El-Boathi* (2017), it has consistently requested Algeria to review or repeal the provisions of Ordinance No. 06-01 that are incompatible with the ICCPR, to ensure that the rights enshrined in it can be enjoyed fully in Algeria.²¹⁹

4.3.5 Lack of implementation by the authorities

117. Algeria's failure to implement the HR Committee's views on enforced disappearances cases has been repeatedly underlined by UN bodies, associations of victims and international NGOs. In its 2018 Concluding Observations, the HR Committee reiterated its concern over the absence of effective investigations and the lack of effective remedies for families of victims. It urged Algeria to implement the views adopted in its individual communications.²²⁰ In March 2018, the HR Committee decided to "suspend follow-up dialogue with the finding of unsatisfactory implementation" of 22 of its decisions.²²¹
118. However, relying on Ordinance No. 06-01, Algeria has consistently refused to reopen investigations and legal proceedings, and claims that an adequate remedy has been provided to those who applied for financial compensation on the basis of the Ordinance.
119. Moreover, Algeria also used intimidation against families of victims who brought cases before the UN human rights mechanisms and publicised their decisions. As abovementioned, Rafik Belamrania was detained and sentenced to imprisonment for publishing the HR Committee's decision on his father.²²²
120. Individuals who submit complaints to the HR Committee are exposed to reprisals by the authorities. In February 2017, the Committee found that the Algerian authorities violated the right to remedy, the right to life, and the prohibition against torture, with regards to Mohamed Belamrania, who was forcibly disappeared and

²¹⁸ See *Khirani v Algeria*, *op. cit.*; *Guezout v Algeria*, *op. cit.*; *Mihoubi (on behalf of Mihoubi) v Algeria*, Communication No. 1874/2009, UN Doc CCPR/C/109/D/1874/2009, 7 January 2014.

²¹⁹ See *Khirani v Algeria*, *op. cit.*; *Khelifati v Algeria*, Merits, Communication No. 2267/2013, UN Doc CCPR/C/120/D/2267/2013, 21 September 2017, para. 8; *Boudjema v Algeria*, Merits, Communication No. 2283/2012, UN Doc CCPR/C/121/D/2283/2013, 1 December 2017, para. 10; *Millis v Algeria*, Merits, Communication No. 239/2014, UN Doc CCPR/C/122/D/239/2014, 28 June 2018, para. 9.

²²⁰ See 2018 Concluding Observations of the Human Rights Committee, *op. cit.*, paras 29 and 30.

²²¹ Human Rights Committee, *Follow-up to Views under the Optional Protocol to the Covenant*, UN Doc. CCPR/C/122/R.2, 29 May 2018, p. 5.

²²² See Frontline Defenders, *Rafik Belamrania Detained*, *op. cit.*

extrajudicially executed in July 1995. Days after the Committee's decision was published, his son Rafik Belamrania, a founding member of Mish'al Association for the Children of the Forcibly Disappeared in Algeria, published the HR Committee's decision on social media. He was arrested a few days later and charged with "advocating terrorism on Facebook." He had filed his father's case with the HR Committee and documented other cases of enforced disappearance, arbitrary detention and extrajudicial executions by Algeria's security forces. In November 2017, he was sentenced to five years' imprisonment and fined 100,000 Algerian dinars.²²³ He was released a year later.²²⁴ His case was mentioned in the 2017 report of the United Nations Secretary-General on reprisals against persons cooperating with United Nations human rights mechanisms.²²⁵

4.4 Regional Framework

121. Algeria has ratified the African Charter on Human and Peoples' Rights (known as the "Banjul Charter") and accepted the jurisdiction of the African Court on Human and Peoples' Rights (ACtHPR) to hear complaints presented by the African Commission on Human and Peoples' Rights (ACHPR), African intergovernmental organisations, and state parties to the Banjul Charter. Algeria has also ratified the Arab Charter on Human Rights. However, as of the time of writing, no decision has been issued by the ACHPR on enforced disappearances cases.²²⁶ Only two decisions on communications have been issued by the ACHPR about Algeria, none concerning cases of enforced disappearance.

4.4.1 Observations and recommendations

122. In its recommendation No. 11 of 2008, the ACHPR urged Algeria to find an appropriate solution to the problem of missing persons and ensure that fair compensation is paid to rights holders. In December 2014, Algeria submitted its fifth and sixth periodic reports, arguing that the Charter for Peace and National Reconciliation included the legal, social and human management of the consequences of the "national tragedy."²²⁷

123. Furthermore, in April 2012, the Special Rapporteur on human rights defenders in Africa expressed his concerns over the prosecution of Algerian human rights defender Mr Mohamed Smain. The Supreme Court in Algiers prosecuted him for "defamation, insult and denunciation of imaginary crimes," after having informed the police in Relizane of the discovery of a mass grave. Mr Smain was subsequently sentenced. The Special Rapporteur called on the authorities to end

²²³ *Ibidem*.

²²⁴ In French, "apologie du terrorisme sur Facebook". Front Line Defenders, *Algeria – Ongoing detention of human rights defender Rafik Belamrania, Urgent appeal*, 10 March 2017, available at <https://www.frontlinedefenders.org/en/case/rafik-belamrania-detained>. In March 2017, several UN Special Procedures mandate holders sought a clarification from the government of Algeria on Belamrania's case. See: *Special Procedures communication AL DZA 2/2017*, 31 mars 2017.

²²⁵ Human Rights Council, *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, 29 March 2018, A/HRC36/31, para. 20.

²²⁶ Only two decisions have been issued against Algeria, both ruling that the communication was inadmissible. See 104/94-109/94-126/94 *Centre of the Independence of Judges and Lawyers vs Algeria*, 15th Ordinary Session, 18 to 27 April 1994, available at <https://www.achpr.org/sessions/descions?id=61>; 13/88 *Hadjali Mohamad vs Algérie*, 15th Ordinary Session, 18 to 27 April 1994, available at <https://www.achpr.org/sessions/descions?id=60>.

²²⁷ African Charter on Human and Peoples' Rights, *Fifth and sixth Periodic Reports on Algeria*, December 2014.

harassment against Mr Smain and to take the necessary measures to clarify cases of enforced disappearances in Algeria, and provide justice to victims.²²⁸

4.5 Universal Jurisdiction

124. One of the main challenges to the use of universal jurisdiction in cases of enforced disappearances is the collection of evidence, due to the geographic and temporal remoteness of the crimes.²²⁹ Investigation is also made difficult by the lack of cooperation of states where atrocities were committed. Since the late 1990s, Algeria has constantly refused access to the WGEID, the Special Rapporteur on torture and the Special Rapporteur on human rights and counter terrorism.²³⁰ In the absence of forensic evidence and the impossibility to access state documentation, cases are heavily reliant on witness statements. As the standard of proof remains that of the prosecuting authorities, cases are at risk to be dismissed for lack of evidence.²³¹
125. On 10 October 2003, FIDH and the French *Ligue des Droits de l'Homme (LDH)* filed a complaint for torture and crimes against humanity against brothers Abdelkader Mohamed and Hocine Mohamed before the Office of the Prosecutor of the High Court in Nîmes, France. Abdelkader and Hocine Mohamed were two militia leaders of the Relizane Self-Defence Group during the 1990s. The High Court launched an investigation and the brothers were indicted in March 2004. On 18 June 2004, the investigating judge mandated an international letter rogatory (*Commission rogatoire internationale*) to investigate the crimes in Algeria. Despite Algeria's refusal to collaborate, the investigation continued until 2013. In December 2014, the investigating judge issued a closing order referring the two accused to the Nîmes Criminal Court for trial. However, this closing order was repealed by the pre-trial chamber (*Chambre de l'instruction*). On 29 March 2017, the French Supreme Court's (*Cour de Cassation*) dismissed the case against Abdelkader Mohamed and Hocine Mohamed due to insufficient evidence.²³²
126. In Switzerland, proceedings are ongoing against Khaled Nezzar for war crimes, including torture and enforced disappearances committed between 1992 and 1994. A general in the Algerian army, Khaled Nezzar was the Minister of Defence in Algeria from 1990 to 1994, and a member of the High Council of State from 1992 to 1994. The criminal complaint was filed in October 2011 by TRIAL International, joined by two victims of torture. Khaled Nezzar was arrested in October 2011 and interviewed by the Swiss attorney general before being released on the condition that he would attend the subsequent proceedings.²³³ In January 2017, the Office of the Attorney General dismissed the case, considering that the alleged acts could not be considered war crimes, on the ground that there was no war in Algeria when the facts occurred. On 30 May 2018, the Federal Criminal Court annulled this

²²⁸ African Charter on Human and Peoples' Rights, *Press release on the judicial harassment of Mohamed Smain, Algerian Human rights Defender*, 23 April 2012, available at <https://www.achpr.org/pressrelease/detail?id=298>.

²²⁹ TRIAL International, *Evidentiary challenges in universal jurisdiction cases*, *Universal Jurisdiction Annual Review 2019*, available at https://trialinternational.org/wp-content/uploads/2019/03/Universal_Jurisdiction_Annual_Review2019.pdf, pp. 9-10.

²³⁰ Country visits of Special Procedures of the Human Rights Council since 1998, available at <https://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx>.

²³¹ See *Evidentiary challenges in universal jurisdiction cases*, *Universal Jurisdiction Annual Review 2019*, *op. cit.*, pp 9-10.

²³² TRIAL International, *Make way for Justice #4, Momentum toward accountability*, 2018, available at <https://trialinternational.org/wp-content/uploads/2018/03/UJAR-Make-way-for-Justice-2018.pdf>, p. 31.

²³³ TRIAL International, *Khaled Nezzar*, 16 May 2016, available at <https://trialinternational.org/latest-post/khaled-nezzar/>.

dismissal. The Court recognised the existence of an armed conflict in Algeria in the early 1990s and found that Khaled Nezzar was aware of the massive crimes that were committed under his authority. The investigation is currently ongoing.



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