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Algeria: President calls referendum to obliterate crimes of the past

On 15 August President Abdelaziz Bouteflika issued a decree on a “Draft Charter for Peace and National Reconciliation”, which outlines a framework for future measures ostensibly aimed at bringing closure to a decade of violent conflict. The publication of the decree follows a prolonged official campaign in favour of a general amnesty.

The Charter contains provisions aimed at exonerating both security forces and armed groups from accountability for grave human rights abuses. Such provisions are inconsistent with Algeria’s obligations under international law and may be a final denial of truth and justice to hundreds of thousands of victims and their families. It is so far unclear whether the Charter will pave the way for a general amnesty law or a series of other measures, as detailed provisions are still lacking.

The Charter proposes measures of exemption from prosecution or clemency for current and former armed group members, some of whom have been responsible for grave human rights abuses. It maintains that security forces and state-armed militias, who have also committed serious human rights violations, acted in the interest of the country and fails to acknowledge that they may have been responsible for serious crimes. It specifically denies that the security forces have been responsible for carrying out thousands of acts of “disappearance”.

Algerians are to vote on the Charter in a referendum on 29 September. In a speech on 14 August, President Bouteflika presented the Charter as the only option for Algerians to bring about a transition to peace.

The lack of any commitment to investigate the grave abuses committed during Algeria’s internal conflict raises serious concerns that proposed measures will perpetuate a climate of impunity and ultimately encourage further abuses in Algeria.

In April, Amnesty International and four other major international human rights organizations called on the Algerian authorities to uphold the right of all victims of serious human rights abuses to truth, justice and reparation in any plan for “national reconciliation”.

According to official statements some 200,000 people have been killed in the Algerian conflict since 1992. Some of these killings are attributed to armed groups, others to security forces and state-armed militias. In the vast majority of cases, no independent investigations have taken place to establish responsibility for the killings and bring the perpetrators to justice.

While the Charter recognizes that grave human rights abuses have been committed by armed groups, it denies that security forces and state-armed militias have also been responsible for serious

human rights violations, in an apparent attempt to stifle continuing calls for investigations of such crimes.

Consequently, Amnesty International fears that these provisions may lead to laws being passed which will exempt security forces and militias who acted in conjunction with them from prosecution in Algerian courts. Information gathered by victims of human rights violations, relatives of victims, and human rights activists constitutes a body of evidence pointing to the responsibility of security forces and state-armed militias in human rights violations committed since 1992. These violations include torture, “disappearances” and extrajudicial executions, which are serious crimes under international law and have, in some cases, been so widespread and systematic as to constitute crimes against humanity.

To date the Algerian authorities have provided almost no verifiable information about cases in which members of the security forces have been brought to trial for these human rights violations. There have also been allegations that certain army and security force units failed to prevent human rights abuses by armed groups and may have operated in conjunction with them. To this day, these allegations have not been investigated.

The Charter specifically denies state responsibility for “disappearances”, and claims that any wrongful acts found to have been committed by state agents have been punished. This stands in stark contrast to the experience that families of the “disappeared” have faced for over a decade. Thousands of Algerian civilians have “disappeared” after arrest between 1993 and 2002 and remain unaccounted for, in spite of their families’ efforts. To Amnesty International’s knowledge, not one of the hundreds of complaints lodged in Algerian courts has established the fate or whereabouts of a “disappeared” person or led to a security officer being prosecuted, even in cases where witnesses were able to identify alleged perpetrators.

The Charter promises families of the “disappeared” compensation and recognition as “victims of the national tragedy”, in addition to unspecified measures to help them overcome the difficulties they may be facing. It does not recognize, however, the need to investigate what happened to the “disappeared”, who remain unaccounted for and whose families may be nurturing the hope that they might be alive in a place of detention.

Amnesty International welcomes the promise of compensation payments to families of the “disappeared”, but believes that these cannot be a substitute for full reparation, which includes restitution, rehabilitation, satisfaction and guarantees of non-repetition, in addition to compensation. Under international law, “disappearances” are considered as a continuing violation, as long as the fate and whereabouts of the “disappeared” person have not been established. Urgent measures are needed to conduct case-by-case investigations to clarify whether a person is alive or dead, what happened during their detention, and who is responsible for their “disappearance”.

The Charter may also provide a basis for curtailing the rights of both victims and human rights activists to publicize and campaign against violations committed by state agents. It calls on Algerians to approve a ban on anyone inside or outside Algeria “instrumentalizing the wounds of the national tragedy” to tarnish the image of state institutions and its agents. Amnesty International believes this to be a serious threat to victims of state abuses and their families, as well as against human rights activists and lawyers, as it may serve to criminalize their legitimate campaigning activities for truth and justice. Such a provision may therefore undermine their right to freedom of expression and association.

With regard to current or former members of armed groups, the Charter proposes a set of measures exempting from prosecution those who give themselves up to the authorities, or who have given themselves up in previous years. Those wanted or sentenced for mass killings, rape or placing explosives in public places are excluded from such measures, but may still be eligible for reduced sentences through an act of clemency.

Armed groups have been responsible for serious crimes during the internal conflict, such as

abductions, torture and unlawful and deliberate killings of civilians, including women and children. Some of these abuses amount to crimes against humanity, but the Algerian authorities have so far failed to investigate the vast majority of them and bring the perpetrators to justice.

Amnesty International is concerned that the measures proposed under the draft Charter may further prevent the emergence of the truth about crimes committed by armed groups, a final judicial determination of guilt or innocence and full reparation for victims and their families. The measures proposed in the Charter resemble some of the provisions of the 1999 Civil Harmony Law, which granted exemption from prosecution to members of armed groups who gave themselves up, providing they had not killed, raped, caused permanent disability or placed explosives in public places. In practice, however, no serious investigations are known to have taken place to determine whether or not members of armed groups were eligible for exemption from prosecution under the terms of the law.

Some 4,500 armed group members are believed to have surrendered under the Civil Harmony Law, but it is not known how many of these were prosecuted for serious crimes not covered under the Civil Harmony Law. More armed group members, who surrendered after the expiry of the law, are believed to have benefited from unspecified measures of clemency or exemption from prosecution outside of any legal framework.

Amnesty International believes that persons who have committed serious crimes which violate international law should be brought to justice, regardless of whether they are civilians or military or whether they belong to an armed group, and regardless of when and where they committed such crimes. Crimes of the severity and magnitude as those committed in Algeria by security forces and armed groups should not be subject to amnesties, pardons or statutes of limitations.

The Algerian government cannot evade its obligations under international law by adopting a Charter that runs contrary to those obligations, regardless of whether or not it will be approved in a referendum. A majority vote should not deny victims of grave abuses their fundamental rights to truth, justice and reparation, nor can it extinguish the state's duty to ensure that perpetrators of serious crimes are brought to justice.

Amnesty International urges the Algerian government not to enact legislation which will prevent the emergence of the truth about serious crimes committed during the internal conflict, a final judicial determination of guilt or innocence and full reparation for victims and their families.

Amnesty International is also concerned that the numerous references in the Charter to the negative effects of what is referred to as "international interference" indicate that the Algerian authorities intend to continue to restrict access to Algeria to international observers and human rights organizations. Such restrictions have made it difficult to document human rights violations.

In particular, the authorities have failed to issue invitations to key United Nations experts who have requested access to the country to conduct investigations. Amnesty International reiterates its call on the Algerian authorities to facilitate without further delay the long-requested visits by the UN Working Group on Enforced and Involuntary Disappearances, the UN Special Rapporteur on Extrajudicial Executions and the UN Special Rapporteur on Torture.

