

ALGERIA

BRIEFING TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (December 2004)

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32nd Session of the UN Committee on the Elimination of Discrimination Against Women, 10-28 January 2005: Comments by Amnesty International on the compliance by Algeria with its obligations under the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

INTRODUCTION

Amnesty International welcomes this opportunity to bring to the attention of the UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee) its concerns relating to the implementation by Algeria of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ahead of the consideration of Algeria's second periodic report.¹

Algeria became a state party to CEDAW on 21 June 1996 with reservations on Articles 2, 9 (2), 15 (4), 16 and 29 (1). It is not a state party to the Optional Protocol. The government submitted its initial report on 1 September 1998, which was considered by the CEDAW Committee at its 406th, 407th and 412th meetings on 21 and 26 January 1999.

This briefing will focus on Amnesty International's concerns regarding violence against women in Algeria. Three main areas of concern will be highlighted: sexual violence by armed groups and by other non-state actors; the impact on women of violations by state actors that were targeted primarily at men; and violence in the family. The briefing also aims to show the impact on violence against women of more than a decade of armed conflict, of discrimination against women in law and practice, and of widespread impunity for human rights violations and abuses.

The internal conflict, which is continuing to this day, albeit at much lower intensity, has had a profound impact on Algerian society. Women have experienced and continue to experience particular kinds of violence as a consequence of the conflict. Some of these are acts of gender-based violence, namely violence "directed against a woman because she is a

¹ Algeria's second periodic report on CEDAW, UN Doc. CEDAW/C/DZA/2, 5 February 2003.

woman or that affects women disproportionately.”² In other cases, women have been left to face the consequences of abuses targeted primarily at men.

Amnesty International fears that the vast majority of incidents of violence against women remain unreported and that, even where they are reported, they remain largely uninvestigated and unpunished. Almost no investigations into human rights violations and abuses have taken place in Algeria, and perpetrators are rarely brought to justice. Women face additional barriers to accessing justice due to their inferior social, economic and legal status. In the majority of cases, women are left without protection by the law, the institutions of the state, or society.

Legal discrimination against women has facilitated violence against women, established and legitimized discrimination in practice and made it particularly difficult for women to deal with the consequences of widespread human rights violations and abuses. Algeria’s reservations to CEDAW on the basis of national legislation, and in particular the Family Code, pose a serious obstacle to implementing CEDAW. Discriminatory attitudes have also facilitated violence against women, and have worsened the impact of sexual violence on women survivors who suffer, in addition, shame and social exclusion. This briefing does not undertake to fully address legal discrimination against women in Algeria, but it will describe a number of discriminatory legal provisions that are directly relevant to Amnesty International’s concerns on violence against women.

Amnesty International welcomes the fact that the Algerian government submitted its second periodic report on CEDAW.³ The organization is concerned, however, at the lack of attention given to the connection between discrimination against women, gender-based violence, and violations of human rights in Algeria generally. The CEDAW Committee’s General Recommendation No. 19 made reference to this close connection and specifically noted that “full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women.”⁴ No information has been provided in Algeria’s second periodic report about violence against women committed in the context of the internal conflict, and no authoritative statistical information has been given about other forms of violence against women, such as violence in the family.⁵

Amnesty International would like to express concern at the fact that the state party report provides little, if any, information on progress made during the period of review on the specific areas of concern highlighted by the CEDAW Committee in its concluding observations in 1999. In several areas of concern to the Committee, the report makes generalized claims about legal equality between men and women, with little detail provided

² Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 19, Violence against women* (Eleventh session, 1992), UN Doc. HRI/GEN/1/Rev.1, para. 6.

³ Algeria’s reports are currently overdue before the Committee Against Torture (CAT), the Committee on the Elimination of Racial Discrimination (CERD), and the Human Rights Committee (HRC).

⁴ CEDAW, *General Recommendation No. 19, supra* note 2, para. 4.

⁵ Amnesty International is aware that a government-sponsored study on violence in the family in Algeria has recently been completed, but the results had not been published at the time of writing this briefing (see section on Article 16 below).

regarding the concrete situation of women. It is often not explained how measures taken in relation to specific obligations have contributed to ending discrimination against women and girls, or how they will contribute to this aim in the future.

This briefing draws on research on violence against women undertaken by Amnesty International as part of its ongoing research on the human rights situation in Algeria throughout the past decade. This includes interviews that were conducted during research missions in 2000 and 2003 with women survivors of violence; interviews with women's organizations both inside and outside Algeria; regular contact with those active in the field of human rights; and monitoring reports from a wide variety of sources. Amnesty International has found that very few women and girls are willing to testify that they were victims of sexual violence. For this reason, some of the research on sexual violence relies on interviews with organizations working with victims of violence inside and outside Algeria. Amnesty International was not able to visit Algeria prior to finalizing this briefing.⁶ As a consequence, it has not been possible to provide detailed case information on the concerns raised.

The section below will give a brief overview of the context in which violence against women has taken place, with particular reference to the issues of "disappearances" and abductions of men, which have affected the situation of women. This is followed by a section outlining concerns regarding obstacles to the implementation of CEDAW as a consequence of Algeria's reservations to the Convention. Concerns on violence against women are raised in order of the articles of the Convention to which they relate. The majority of these concerns are raised under Article 2 as they relate to violence against women.

⁶ The organization has made several requests to visit Algeria since late 2003, but was not granted access to visit in 2004.

THE CONTEXT

Since the cancellation in 1992 of Algeria's first multi-party elections, which the Islamic Salvation Front (Front islamique du salut, FIS) looked set to win, the country has been ravaged by an internal conflict that has resulted in the deaths of tens of thousands of Algerians at the hands of armed groups, security forces and state-armed militias. Civilians, both men and women, have been targeted in attacks by armed groups, or killed or injured as a result of indiscriminate attacks. Thousands of people, most of them men, have "disappeared" after arrest by security forces and state-armed militias, and hundreds of thousands have been tortured. Many more have been injured or suffer the emotional, social and economic consequences of the violence.

The vast majority of human rights violations and abuses committed in the context of the conflict have never been fully investigated, leaving victims without justice, redress or compensation. Instead, perpetrators, whether security forces, state-armed militias or armed groups, have enjoyed impunity. The Algerian authorities continue to deny that state agents have been responsible for widespread human rights violations. Some legislative reform measures introduced in recent years, which may contribute to improved human rights protection in the long run, have largely failed to bring about change in practice. The government has yet to find the political will to ensure that those who commit human rights abuses are held to account.⁷

Investigating and reporting on human rights violations and abuses are restricted by the authorities. Algeria has not cooperated effectively with UN human rights mechanisms, and continues to impose restrictions on access to the country for other international observers, such as journalists and international non-governmental organizations. Information on armed group activities and operations of the security forces generally relies exclusively on security sources and cannot be independently verified. Over the past year, freedom of expression inside Algeria has been markedly restricted. There has been a steep increase in the number of court cases brought against journalists and newspaper editors in an apparent attempt to silence the privately owned press. Many of these are defamation cases filed against individual journalists, who face prison sentences for reporting allegations of corruption or publicly criticizing officials.

Popular confidence in the authorities' willingness to respect human rights and the rule of law remains low. This and other factors have fomented the seeds of unrest and protests among Algeria's predominantly young population. The heavy-handed way in which these protests have been repressed has fuelled the discontent further, contributing to a situation that remains explosive.

Despite macro-economic stability based on the hydrocarbon sector, the majority of Algerians have seen their living standards deteriorate over recent years, leading to strikes and

⁷ For a full account of Amnesty International's concerns on the inefficiency of recent measures of reform see Amnesty International's report *Algeria: Steps towards change or empty promises?* (MDE 28/005/2003), September 2003.

demonstrations to demand jobs, housing, social welfare and better living and working conditions. Unemployment officially stands at around 30 per cent, with figures particularly high among the young, who make up the bulk of the population; 80 per cent of the unemployed are under 30 years of age. An acute housing shortage has pushed the average occupancy rate up to around 7.5 people per dwelling. As a percentage of gross domestic product, health care expenditure has dropped in recent years to just 3.1 per cent. Water reportedly reaches households in the capital Algiers only one day out of three.⁸

“Disappearances”

Thousands of people, mainly men, have “disappeared” following arrest by security forces or state-armed militias during the 1990s, in particular between 1994 and 1998.⁹ People from every walk of life and of all ages have been taken away from their homes, often at night and in front of their families or neighbours, from their places of work in the presence of colleagues, or from the street, by police, gendarmerie and Military Security units, as well as by militias armed by the state. Many are believed to have been arrested because they were suspected by the security forces of being connected in some way with an armed group or of having sympathies with the banned FIS, or had been denounced as such. In other cases, there is no apparent reason why they might have “disappeared”.

Amnesty International has not received information on new cases of “disappearance” since 2003. This is a positive development, although there are still no adequate safeguards to prevent “disappearances” from happening in the future.¹⁰ As yet, little has been done to establish the truth about “disappearances” that occurred in previous years. The fate of the victims remains unknown. Their families continue to be kept in ignorance about the fate of the “disappeared” and denied the right to reparation, the right to family life and various economic, social and cultural rights.

In September 2003 the Algerian authorities established a commission on “disappearances” to serve as an interface between the Algerian authorities and families of the “disappeared”. The commission is not known to have an official title, but is commonly referred to as the ad hoc mechanism (*mécanisme ad hoc*). The mechanism was set up for a duration of 18 months within the institutional framework of the official human rights body, which reports to the president, the National Consultative Commission for the Promotion and

⁸ Sources: UNDP, IMF, World Bank.

⁹ Amnesty International has received information on the cases of some 4,000 “disappeared”, the vast majority of whom were arrested between 1994 and 1998. The organization recognizes, however, that the true figure may be much higher. The authorities themselves have used figures of between 5,000 and 7,000, and local human rights organizations estimate that the total number may be higher still. For a more extensive account of Amnesty International’s concerns on “disappearances” in Algeria see Amnesty International’s reports *Algeria: “Disappearances”: the wall of silence begins to crumble* (MDE 28/01/99), and *Algeria: Steps towards change or empty promises?* (MDE 28/005/2003), pp. 25 ff.

¹⁰ See Amnesty International’s report *Algeria: Steps towards change or empty promises?* (MDE 28/005/2003), p. 7.

Protection of Human Rights (Commission nationale consultative de promotion et de protection des droits de l'Homme, CNCPPDH).¹¹ It is composed of members of the official human rights body and headed by CNCPPDH president Farouk Ksentini. The mechanism is charged with collecting information about "disappearance" cases, with facilitating communication between the families of the "disappeared" and relevant authorities and with elaborating proposals for solving the problem of "disappearances" in Algeria.¹² Since the creation of the mechanism, there has been an unprecedented level of debate about the issue of "disappearances" inside Algeria.

The mechanism is endowed with little more powers than previous official human rights bodies, which have, for nearly a decade, failed to provide families with credible information or to respond adequately to their appeals. Amnesty International is concerned that the mechanism lacks the necessary investigative powers and mandate to work towards the full, independent and impartial investigations that are necessary. In particular, it does not have the specific mandate or powers to ensure that information available in archives of the security forces is made accessible in order to investigate "disappearances". It has no mandate to act on credible material indicating the responsibility of individuals, including, most importantly, referring such material to the relevant authorities in order that legal proceedings be initiated. Without such powers, it will not be able to establish what happened after the person was arrested, or to play a significant role in ending impunity for "disappearances". The mechanism is not subject to public scrutiny and does not have the statutory duty to consult or involve organizations of families of the "disappeared".¹³ More than a year after its creation, there has been no public report on its work or the methods it has used.

In the absence of effective domestic remedies, over 1,000 Algerian "disappearance" cases have been submitted by local and international human rights organizations to the UN Working Group on Enforced or Involuntary Disappearances (WGEID). The group has 1,105

¹¹ The CNCPPDH succeeded the previous official human rights body, the National Observatory for Human Rights (Observatoire national des droits de l'Homme), which had been dissolved by President Abdelaziz Bouteflika, following years of criticism for failing to acknowledge, or take active steps towards investigating or preventing, grave human rights violations by the state during the previous decade. Since its members were appointed by presidential decree in October 2001, the CNCPPDH has made efforts to show greater willingness to listen to families of victims of human rights violations by the state, notably the families of the "disappeared".

¹² Presidential decree 03-299, dated 11 September 2003, published in the Algerian official bulletin (*Journal Officiel*) of 14 September 2003.

¹³ In recent months, families have been summoned by the mechanism and questioned about their willingness to accept compensation payments for the "disappearance" of their relatives. Some limited consultation on preferred solutions to the problem of "disappearances" was carried out as part of the interviews conducted with the families. However, the mechanism is not bound by the results of this consultation and it does not report publicly on the outcome or the methods employed. Organizations of families of the "disappeared" have protested against the mechanism, which, in their view, lacks the necessary powers, independence and transparency. They have called for a genuine commission of inquiry to be set up.

outstanding cases on its records, according to its latest report.¹⁴ However, WGEID has not been granted access to Algeria since it made a request to visit the country in 2000. Other UN thematic mechanisms that might facilitate a move towards investigations of “disappearances” and other human rights violations have also been denied access, such as the Special Rapporteur on Torture and the Special Rapporteur on Extrajudicial Executions.

As time passes, it will become increasingly difficult to trace witnesses who are able to contribute to clarifying the fate of the “disappeared”. Physical evidence of possible executions of the “disappeared” may be destroyed, as in one recently reported case of the destruction of a mass grave site in the province of Relizane, which was presumed to contain the bodies of people who “disappeared” at the hands of local state-armed militias and are feared to have been executed by them.¹⁵

Abductions by armed groups

Thousands of people have been abducted by armed groups since the beginning of the conflict and are presumed to have been summarily killed by them, but their bodies have never been found. Their families believe that the remains of their relatives may lie in mass graves and hope that sooner rather than later those remains might be exhumed, allowing them to lay their relatives to rest with dignity. However, the way in which the authorities have dealt with mass graves, more than a dozen of which have been discovered since 1998, has generated considerable fears among these families that the available evidence is either not being processed in line with internationally accepted standards or, worse, is being destroyed. To Amnesty International’s knowledge, out of the scores of bodies exhumed from mass grave sites since 1998, only a few have been identified.¹⁶

¹⁴ Commission on Human Rights, *Report of the Working Group on Enforced or Involuntary Disappearances*, UN Doc. E/CN.4/2004/58, 21 January 2004, para. 31.

¹⁵ Mohamed Smaïn, a local human rights activist and representative of the Algerian League for the Defence of Human Rights (Ligue algérienne pour la défense des droits de l’Homme, LADDH), had located a mass grave near Sidi Mohamed Benaouda in the province of Relizane and identified skeletal remains and items of clothing found at the site as belonging to Abed Saidane, a 48-year-old shopkeeper and father of seven who was abducted in front of several relatives by members of a local state-armed militia on 9 September 1996. Reportedly, human remains were secretly removed from the site in January 2004 after local human rights campaigners had publicized their concern that this and other mass grave sites in the area contained the remains of individuals who had “disappeared”. The authorities did not prevent this apparent attempt to conceal or destroy evidence of human rights abuses, and, to Amnesty International’s knowledge, the incidents have not been investigated. Human rights campaigners allege that several other mass grave sites in the same area were exhumed and relocated in 2000 by members of the same militia in order to cover up their crimes. Local state-armed militias are alleged to be responsible for the “disappearance” of over 200 civilians in the area in the mid-1990s. See Amnesty International press release *Algeria: Commitment on mass grave investigations needed from presidential candidates*, 9 February 2004 (AI Index: MDE 28/001/2004).

¹⁶ For an account of Amnesty International’s concerns regarding the treatment of mass graves see Amnesty International’s report *Algeria: Steps towards change or empty promises?* (MDE 28/005/2003), pp. 30 ff.

ALGERIA'S RESERVATIONS TO CEDAW

Upon accession to CEDAW the Algerian government entered reservations to Articles 2, 9 (2), 15 (4), 16 and 29 (1). With the exception of reservations to Article 29 (1), all of these are based on the Family Code. Reservations to Article 9 are also based on the Nationality Code.

Article 19 of the Vienna Convention on the Law of Treaties permits states to make reservations at the time of ratification or accession to a treaty. Reservations to CEDAW are allowed to ensure that a maximum number of states can become parties to the Convention. However, under Article 19 of the Vienna Convention, reservations must not be incompatible with the object and purpose of CEDAW. At its 13th session, in 1993, the Committee voiced its agreement with the view of the Vienna World Conference on Human Rights that states should consider limiting the extent of any reservations they make to international human rights instruments, formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the treaty concerned and regularly review any reservations with a view to withdrawing them.¹⁷

Amnesty International's most serious concern regarding Algeria's reservations relates to Articles 2 and 16. Algeria has stated that it will only implement these articles in so far as they do not conflict with the Family Code. Numerous provisions of the Algerian Family Code discriminate against women. This was noted by the CEDAW Committee in its concluding observations of 1999 and the Committee requested that the Algerian government repeal discriminatory laws. The Committee further stated that "the numerous discriminatory provisions of the Family Code and the persistence of prejudice and patriarchal practices conflict de facto with the principles of the Convention" and urged the Algerian government to withdraw its reservations.¹⁸

Algerian women's rights activists have opposed the Family Code ever since its introduction in 1984 because it fundamentally undermines women's equality in society. Some of them have put forward detailed proposals for amendments that would make the Code non-discriminatory. Most women's activists in Algeria recognize recently proposed amendments to the Code as a significant improvement to the present law, although the draft is believed to stop far short of eliminating all discriminatory provisions of the Family Code. As it stands at present, the Family Code contains provisions which are in breach of Articles 2 and 16, leading in effect to their non-implementation.

Other specific provisions of the Convention are adversely affected by the reservations entered to Articles 2 and 16, such as Articles 5, 7, 10 and 11. Amnesty International is

¹⁷ Committee on the Elimination of all forms of Discrimination Against Women, *Ways and Means of expediting the work of the Committee, Report by the Secretariat*, UN Doc. CEDAW/C/1994/6, 30 November 1993, paras. 3-7.

¹⁸ Committee on the Elimination of Discrimination Against Women, *Concluding Observations: Algeria*, UN Doc. A/54/38 (Part I), 27 January 1999, paras. 68, 70, respectively. The governments of Denmark, Germany, Norway, the Netherlands, Portugal and Sweden have also declared that they consider the reservations made by the Algerian government as incompatible with the object and purpose of CEDAW and, therefore, prohibited by virtue of Article 28 (2).

particularly concerned that Algeria's reservations to Article 16 contribute to weakening women's protection from acts of violence, including marital rape and violence in the family, and from discriminatory practices that increase vulnerability to violence, including polygamy, divorce at the unilateral will of the husband, and the denial of equal rights to women who leave violent relationships (see section on Article 16 below).

The CEDAW Committee has confirmed the central importance of Article 16 to the purpose of the Convention in its General Recommendation No. 21 and urged states parties to "resolutely discourage any notions of inequality of women and men which are affirmed by laws... and progress to a stage where reservations, particularly to Article 16, will be withdrawn."¹⁹ In its 1999 concluding observations on Algeria the CEDAW Committee stated that it was "seriously concerned by the fact that the Family Code still contains many discriminatory provisions which deny Algerian women their basic rights, such as free consent to marriage, equal rights to divorce, sharing of family and child-rearing responsibilities, shared child custody rights with fathers, the right to dignity and self-respect and, above all, the elimination of polygamy."²⁰

In light of the fundamental way in which the current provisions of the Family Code conflict with the purpose of the Convention, Amnesty International is concerned that Algeria has so far failed to effectively review its national legislation in order to bring it into compliance with the provisions of CEDAW. Article 123 of Algeria's constitution recognizes the supremacy of international law, but by entering reservations on the basis of conflict with the Family Code, Algeria has allowed the continued application of laws which are contrary to the object and purpose of this Convention. This not only perpetuates discrimination against women, but also protects laws that facilitate violence against women (see in particular Articles 15 and 16).

¹⁹ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 21, Equality in Marriage and Family Relations* (13th session, 1994), UN Doc. HRI/GEN/1/Rev.1, paras. 43-4.

²⁰ CEDAW, *Concluding Observations: Algeria*, *supra* note 18, para. 91.

ARTICLE 2

Equality between men and women is recognized in Article 29 of Algeria's constitution, but it is not guaranteed in other national legislation, in particular the Family Code.

Article 2 is directly relevant to the obligations of states under CEDAW to eliminate violence against women. In its General Recommendation No. 19, adopted in 1992, the CEDAW Committee states that "States Parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence."²¹ Algeria's reservation to Article 2 is worded vaguely and its effect on implementation of the Convention is not explained. The reservation states that Algeria will only implement Article 2 where it does not conflict with the Family Code. This raises questions regarding Algeria's commitment to eliminating violence against women.

Article 2 provides that appropriate measures need to be taken to ensure that the rights guaranteed in CEDAW are protected at the local level, through legislation among other means. Women should enjoy the protection of the law and should be able to claim their rights in court on the basis of existing legislation and through procedures that take into account their needs, especially where violence has been inflicted on them. Algeria's reservations to CEDAW, and in particular to Article 2, reflect the government's failure to grant women this protection.

Contrary to recommended reporting guidelines on international human rights treaties, the government report does not provide information on the reasons for maintaining reservations to Article 2, or on their effect on implementation of the Convention during the period under review.²²

Amnesty International is aware that the government of Algeria has recently taken steps to amend discriminatory laws, including the Nationality and Family Codes, and to introduce legislation on violence against women. Amnesty International welcomes these recent efforts to amend discriminatory legislation and hopes that the Algerian government will take further steps to bring the Family Code into line with Algeria's obligations under the Convention. At the time of finalizing this briefing, the new draft laws had not yet been adopted and Amnesty International had not been able to obtain copies of the draft laws. From the limited information available through press reports, amendments are due to be introduced to some key discriminatory provisions contained in the Code, notably to the legal subordination of married women to their husbands, but other discriminatory aspects, such as discriminatory divorce provisions, are reportedly not addressed.

²¹ CEDAW, *General Recommendation No. 19*, *supra* note 2, para. 24 (t).

²² See *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties, Addendum*, UN Doc HRI/GEN/2/Rev.1/Add.2, 5 May 2003. See also earlier compilation: *Compilation of Guidelines on the form and content of reports to be submitted by States Parties*, UN Doc. HRI/GEN/2/Rev.1, 9 May 2001 and the CEDAW Committee's earlier comments on reservations, *General Recommendation No. 20, Reservations to the Convention* (11th session, 1992); *General Recommendation No. 21*, *supra* note 19, paras. 41-7.

The Algerian government should systematically review all national legislation to ensure that it is made consistent with its obligations under CEDAW. The Penal Code contains a key discriminatory provision for the punishment of adultery, which conflicts with Article 2 (g) of the Convention. According to Article 339 of the Penal Code, adultery is a crime punishable by between one and two years' imprisonment. Penalties for adultery are the same for men and women except in the case of an unmarried person who did not know that the person they had sexual relations with was married. If this person is a woman she may be punished by the same penalty as a married person found guilty of adultery. Unmarried men in the same situation, however, may be punished only if they knew their partner was married.²³

This provision is discriminatory on the grounds of gender and allows for women's sexual behaviour to be controlled to a greater extent than men's. The Beijing Platform for Action states that "the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality." It goes on to say that equal relationships between men and women in sexual relations require "shared responsibility for sexual behaviour and its consequences."²⁴

Violence against women in conflict and post-conflict

General Recommendation No. 19 states that the definition of discrimination contained in Article 1 of CEDAW includes gender-based violence – violence directed against a woman because she is a woman or that affects women disproportionately. The general prohibition of discrimination against women under Article 2 therefore includes the duty to prevent violence against women. The Committee also noted that "gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence."²⁵

Amnesty International would like to bring to the Committee's attention the failure of the Algerian government during the period of review to exercise due diligence to protect women from violence, to provide care for women who have suffered violence and to punish perpetrators of violence against women. Although both physical and psychological violence are banned explicitly in Article 34 of Algeria's Constitution, Algeria does not have legislation that adequately addresses violence against women, as was noted in the Committee's concluding observations of 1999, which recommended the introduction of legislative and other measures to ensure better protection of women from violence.²⁶

²³ The relevant provisions of Article 339 read: *Est punie d'un emprisonnement d'un à deux ans toute femme mariée convaincue d'adultère. Quiconque consomme l'adultère avec une femme la sachant mariée est puni de la même peine. Est puni d'un emprisonnement d'un à deux ans, tout homme marié convaincu d'adultère; la femme coauteur est punie de la même peine, sans préjudice des dispositions de l'alinéa précédent.*

²⁴ *Beijing Declaration and Platform for Action*, adopted by the Fourth World Conference on Women, A/CONF.177/20 (Declaration) and A/CONF.177/20/Add.1 (Platform for Action), 15 September 1995, para. 96.

²⁵ CEDAW, *General Recommendation No. 19*, *supra* note 2, para. 6.

²⁶ CEDAW, *Concluding Observations: Algeria*, *supra* note 18, paras. 79-80.

Gender-based violence

In its 1999 observations the Committee noted with concern the great number of women and girls abducted, raped and murdered by armed groups. The Committee highlighted the state's responsibility to protect persons and property and recommended that better care should be provided to women who had been subjected to rape by armed groups.²⁷ Even so, state care for women survivors of sexual violence has remained virtually non-existent, and NGOs that provide medical and psychological care, or offer shelter, remain scarce. In addition, most such organizations are concentrated in and around the capital, leaving women in other parts of the country with no access to care, support or legal advice.

In its General Recommendation No. 19, the CEDAW Committee has stated that "Under general international law and specific human rights covenants, States may... be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."²⁸

The Algerian authorities have failed to fulfil their duty to protect women from armed group violence, or to punish perpetrators and provide redress for the victims. Algeria's report to the CEDAW Committee only mentions in passing that women have been targets of sexual violence and makes no reference to action taken by the authorities.²⁹ The report does not provide any information on the number of women who have been subjected to sexual violence by armed groups or the progress made in providing care for them.

Continuing lack of protection

Press reports suggest that the number of abductions and rape of women by armed groups has decreased significantly since 1999, but such attacks have continued to take place. It is, however, usually impossible to independently verify press reports about armed group abuses and there are no reliable statistics about how many women and girls were abducted and raped either during the period under review or prior to 1999.

Hundreds of women and girls have reportedly been subjected to sexual violence by armed groups during the internal conflict.³⁰ Some of these women have reportedly been abducted and raped and later mutilated and killed by the assailants. In other cases, abducted women have been forced to stay with an armed group, during which time they were reportedly raped and forced to carry out domestic duties, such as cooking and cleaning, and

²⁷ *Ibid.*, paras. 77-8.

²⁸ CEDAW, *General Recommendation No. 19*, *supra* note 2, para. 9.

²⁹ Algeria's second periodic report, *supra* note 1, p. 16

³⁰ Amnesty International recognizes that the true figure may be higher, but has not had access to information allowing it to establish different figures. A 1999 report by the Collectif 95 Maghreb Egalité estimates the number of women victims of gender-based violence at 5,000 on the basis of undisclosed information received from the gendarmerie, the army and the health sector (see Collectif 95 Maghreb Egalité: *Les Maghrebines entre violences symboliques et violences physiques: Algérie, Maroc, Tunisie. Rapport annuel 1998-1999*). Amnesty International has not had access to figures of the national gendarmerie or any other authoritative official statistics pertaining to sexual violence against women in the internal conflict.

were later able to escape or were left behind when the group moved on. Other women have reportedly been released after they developed mental disturbances as a consequence of the assault. Women who survive sexual violence may suffer the additional trauma of having witnessed the violent killing of members of their family, or the rape of other women, sometimes members of their family.

Almost never are the perpetrators of attacks identified or caught and their motives revealed. In some cases, women may be attacked because they or their family are accused of supporting the authorities or of not supporting the armed groups. In other cases, women may receive threats because armed group members object to their behaviour or lifestyle, such as wearing Western-style clothing or living on their own. As has been the case since armed groups came into existence in Algeria, information about their leadership, composition and demands remain unclear since they have no spokespeople and issue few, if any, public statements. As a consequence, the rationale of why a particular woman would have been targeted for abduction and rape often remains obscure to the victim and their family. An increasing number of attacks may be linked to criminal activities, such as theft, racketeering and extortion, during which women may be sexually assaulted or raped.

Testimonies of women who have fled Algeria suggest that, in addition to physical assaults, many women have experienced threats and intimidation by members of armed groups, or other armed men. Some of these women escaped sexual assaults by leaving the area where they lived. Women who had witnessed attacks on neighbours or members of their families were particularly traumatized, living in constant fear that the attackers might eventually find them.

Women have also been subjected to violent attacks by other non-state actors. In July 2001 some 300 men carried out a violent attack on women living on their own in Hassi Messaoud, southern Algeria, after an imam at a local mosque had reportedly denounced the women as prostitutes. Many of the women had travelled to the oil-rich region, where they were able to find work as cleaners, secretaries and cooks. Almost all of the women reported having been sexually assaulted by the crowd of men who ransacked their homes, raped some of the women and reportedly gang-raped three of them. Some women had their faces slit, or were burned or stabbed with knives. The rooms in which they lived were ransacked and looted. The exceptional cruelty of the attack was reminiscent of attacks on women committed in the context of the internal conflict. Similarly, the delayed intervention and lack of thorough investigation by the police recalled the failure of the security forces during the internal conflict to protect civilians from armed group attacks. Newspapers reported that police did not intervene until hours after the attack on the women had begun, despite the fact that a large number of security forces is present in the area. Few of the perpetrators were arrested and even fewer prosecuted. None of those prosecuted were convicted of rape or sexual assault (see p. 12).

Such reports of violence against women by men in their communities may only represent the tip of the iceberg. Some reports indicated that similar attacks, albeit on a smaller scale, were committed in the southern Algerian town of Tebessa during the same month as the attacks in Hassi Messaoud. Often, survivors of sexual violence are not prepared to testify, or

even report, the crime, irrespective of who the perpetrators are. This is largely due to the social stigma attached to rape victims and the lack of support they receive. Reporting acts of sexual violence is further discouraged by the minimal chances of obtaining redress. The extreme rarity of punishment of violence against women weakens women's protection under the law, as perpetrators know they are able to commit these crimes with impunity.

Lack of redress

Bringing perpetrators to justice can be an important factor in helping women overcome the humiliation and trauma of sexual violence. Access to justice and redress are fundamental rights of victims of human rights abuses. Under CEDAW, as well as general international law, states may be responsible for private acts if they fail to act with due diligence to prevent, investigate and punish acts of violence against women, and to ensure redress.³¹ Such violence in Algeria is seldom investigated, and perpetrators are seldom prosecuted, let alone punished.

Members of armed groups have rarely been brought to justice for human rights abuses. This is partly due to the fact that many have been killed, either in clashes with the security forces, or during search operations carried out by the security forces. Press reports on such incidents generally do not indicate that attempts were made to arrest them. Other armed group members who have given themselves up to the authorities have apparently benefited from unspecified measures of exemption from prosecution.³² According to organizations working with survivors of armed group abuses, evidence gathered by the security forces during interviews with women after assaults is generally not used to investigate the crime and bring the perpetrators to justice. A woman who had been sexually assaulted in 2001 told Amnesty International that she saw some of her attackers walking freely in the area where she lived, but that the security forces did not arrest them because they had been exempted from prosecution.³³

Most women do not seek justice through the courts. Organizations working with women survivors have told Amnesty International that this is partly due to the shame associated with the assault. In the experience of these organizations, many women are not aware of their rights to justice and reparation, and do not know where to find legal advice, or cannot afford it. Women who do not have adequate legal advice may be treated as culprits, due to a general lack of awareness among security officers of rape as a crime.³⁴ Deep-rooted beliefs that a woman may have encouraged a man to rape her or otherwise provoked the assault contribute to this. Security officers in Algeria generally receive no training on how to treat rape victims and are not equipped to deal with the shock and trauma experienced by the

³¹ CEDAW, *General Recommendation No. 19*, *supra* note 2, para. 9.

³² Amnesty International report *Algeria: Steps towards change or empty promises?* (MDE 28/005/2003), p. 41ff.

³³ *Ibid.*, p. 39.

³⁴ The case of a woman who was unable to report rape at an Algerian police station provides an illustrative example of this lack of awareness: a mature woman, who attempted to report the fact that she had been raped, was told by a police officer that, at her age, she could hardly claim to have been raped. The woman dropped her complaint.

victim.³⁵ A woman who lodges a complaint for sexual assault is widely perceived as upsetting the social order and many women are reportedly dissuaded by their social environment, and sometimes by officials, doctors and judges involved in the case.³⁶

Another problem is the lack of legal definition of rape in Algerian law. Article 336 of the Penal Code makes rape a crime punishable by five to 10 years' imprisonment, without offering a definition of the crime.³⁷ As law enforcement officers receive no training on preserving and recording evidence of an alleged rape, medical evidence is often lost. Such evidence can be crucial in securing a conviction, in the rare cases where a rape case is tried in court. As a consequence of the lack of attention to recording and preserving evidence when the rape is reported, women's prospects of obtaining justice and redress is weakened. According to Algerian women's activists who work with women victims of violence, medical certificates are in most cases only recognized in court if they are issued by a forensic doctor.³⁸ However, a woman who has been raped may not be aware of the fact that she requires a particular medical certificate, and she may not be informed of this requirement at the police station. In some parts of Algeria, in particular in rural areas, there may not be a forensic doctor within easy reach, which can make it difficult for a woman to obtain a forensic certificate.

All of these obstacles contribute to the fact that perpetrators of sexual assaults on women are rarely prosecuted, and even more rarely convicted of rape. Following the assault on women in Hassi Messaoud in 2001, some 40 men were reportedly arrested and charged with theft, rape and assault, among other crimes. Ten of the men were later released, and the remaining men were eventually sentenced in June 2002 to up to three years' imprisonment for participating in an illegal gathering and aggravated theft. None of them received a conviction for rape, apparently due to the fact that the women were not able to provide the required medical evidence to support their claims of rape and other violent sexual assault.

Algeria's report to the CEDAW Committee notes that steps have been taken to increase the number of women in the police force and to ensure the presence of at least one woman at the level of each sub-prefecture, to provide better reporting facilities for women victims of violence.³⁹ While Amnesty International welcomes the intention to increase the number of women in the police force and widen their presence in police stations, this measure alone is unlikely to improve the situation faced by victims, as adequate training and

³⁵ For example, one women's activist told Amnesty International, "A rape victim who comes to a police station is treated no differently than a woman who had her hand bag stolen."

³⁶ Réseau Wassila: *Livre blanc. Violences contre les femmes et les enfants*. Algiers: 2002, p. 94f.

³⁷ Articles 334 (for minors) and 335 make indecent assault (*attentats à la pudeur*) punishable by the same penalty. Women's organizations have criticized the fact that rape is classified as a violation of morality (*attentat aux mœurs*), rather than a crime against a person, which in their view belittles the severity of the crime.

³⁸ Réseau Wassila: *Livre blanc. Violences contre les femmes et les enfants*. Algiers: 2002.

³⁹ Algeria's second periodic report, *supra* note 1, p. 17. The numbers of women in the police force provided for 2002 are not related to the numbers of women previously present in that sector, nor does the report give an indication of the share of women as compared to men.

procedures for gathering evidence are also essential. Women's organizations working with survivors of sexual assaults have told Amnesty International that they did not notice a difference in the way male and female police officers dealt with the victims, since neither had received training.

Lack of care

Apart from the immediate physical injury and mental anguish, women who are raped run the risk of becoming pregnant or of contracting sexually transmitted diseases, such as HIV/AIDS. There can also be an increased risk of developing other health problems in the long term, including chronic pain, physical disability, misuse of drugs and alcohol, and depression. Victims may suffer traumatic consequences for long periods of time – even for the rest of their lives – if they do not receive appropriate help. In terms of reproductive health, sexually abused women are more likely to suffer unwanted pregnancies and gynaecological problems and to develop serious problems with their sex lives.

In Algeria, most women are apparently seen by a doctor if the assault is reported, but there are no state-run medical or psychological rehabilitation programmes to help women overcome the consequences of rape. There are no effective mechanisms for the provision of redress, including rehabilitation and compensation. Amnesty International is aware that a new draft law on health care is making explicit reference to the state's duty to provide medical and psychological care for women victims of violence and to facilitate their social reintegration.⁴⁰ However, the law is worded vaguely and unspecific with regard to the duties of the state.

Such rehabilitation programmes are particularly needed in a society such as Algeria's, where victims of rape are forced to deal not only with the medical and psychological effects of the crime, but also with the social taboos, shame and stigma attached to this sensitive issue. Psychologists who have worked with women who have survived sexual assault in Algeria report that the women feel abandoned and isolated. Their trauma is exacerbated if they do not know why they were targeted by their assailants.

The impact of sexual violence on women's lives is especially devastating as many do not receive support from those closest to them. A woman who has been sexually assaulted is often considered a dishonour to the family and may be abandoned by her family or by her husband as a consequence. Such women are left homeless and often without financial resources or access to social benefits. This has dire consequences, as a woman is unlikely to find employment or housing, given the acute housing shortage and high unemployment rates. There are virtually no programmes that would enable them to reintegrate into society, to find housing or support them in securing an income. A handful of shelters run by the government and by non-governmental organizations provide housing and support for several dozen

⁴⁰ Article 15 of the draft law of February 2003 published on <http://www.santemaghreb.com/algerie/loisanit.htm> states: "The state makes medical and psychological resources available in order to ease the suffering of women victims of violence and to facilitate their social reintegration. Violence against women is understood to include violence that causes them or is likely to cause them physical, sexual or psychological harm or suffering, and includes the threat of violence, coercion or the arbitrary deprivation of freedom, in public or in private."

women at a time, including victims of sexual violence by armed groups.⁴¹ However, they do not have adequate resources to support the hundreds of women and girls who need help.

Women's organizations in Algeria have also campaigned against discrimination against women who survive rape at the hands of armed groups in the way they are treated as victims. These women are excluded from economic benefits which the government has made available to victims of other armed group abuses who have suffered physical injury or material loss.⁴² Despite the physical and, in many cases, economic consequences suffered by rape victims, they have in practice not been granted these benefits.

The state's failure to investigate and punish acts of sexual violence against women during the conflict and to grant women survivors their right to care and redress has contributed to weakening women's protection from violence. The lack of due diligence exercised by the Algerian government in preventing, investigating and punishing such acts signals to perpetrators that violence against women can be committed with impunity. It has left women without protection by the law, society, or the institutions of the state, and without care for the physical and mental injuries they have suffered.

Female relatives of the “disappeared”

“Disappearances” have long been recognized in international human rights law as a violation of fundamental human rights. The suffering and anguish inflicted on relatives of the “disappeared” has also been found to constitute a violation of their human rights, which may be described as torture. In the case of *Quinteros v. Uruguay*, the Human Rights Committee, noting the “anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts”, found that the mother of a woman who “disappeared” after being arrested by the security forces was herself a victim of a violation of Article 7 of the International Covenant on Civil and Political Rights.⁴³ Similar

⁴¹ An article in the Algerian press in 2004 indicated that a governmental centre for women victims of violence in the capital Algiers had the capacity to provide housing for some 30 women victims of violence. Since 1999, the centre had only been able to provide help to five women who had been victims of sexual violence by armed groups. (*Le Jeune Indépendant*, 26 June 2004) The non-governmental organization SOS Femmes en détresse (SOS Women in Distress) runs a shelter in Algiers for women victims of all forms of violence. The centre is currently being renovated and will then have a capacity to house 60 women at a time. According to estimates by the organization, it has housed some seven women who have been victims of sexual violence by armed groups.

⁴² Two decrees of 1997 and 1999 regulate these payments: Decree no. 97-49 of 12 February 1997, published in the Algerian official bulletin (*Journal Officiel*) of 17 February 1997 and Decree no. 99-47, dated 13 February 1999, published in the official bulletin of 17 February 1999.

⁴³ *Maria del Carmen Almeida de Quinteros, on behalf of her daughter, Elena Quinteros Almeida, and on her own behalf v. Uruguay*, Communication No. 107/1981 (17 September 1981), UN GAOR Supp. No. 40 (A/38/40) at 216 (1983), para. 14.

rulings were made by the European Court of Human Rights in the case of *Kurt v. Turkey*,⁴⁴ and by the Inter-American Court of Human Rights in the case of *Blake v. Guatemala*.⁴⁵

Of the thousands of “disappearances” in Algeria on which Amnesty International has received information, some 99 per cent are men. Their arrest and “disappearance” have left several thousand relatives, the majority of them women, suffering the agony of not knowing the fate of a husband, father, son or brother and, in some cases, of more than one member of the family. According to General Recommendation No. 19, the right not to be subjected to torture or to cruel, inhuman and degrading treatment or punishment, and the right to the highest standard attainable of physical and mental health are included within the meaning of Article 1 of the Convention.⁴⁶ By failing to take meaningful steps to investigate “disappearances” and by denying relatives the truth, Algeria is therefore in breach of Article 2 of the Convention.

In addition, female relatives of the “disappeared”, and especially their wives, are subjected to double discrimination as a consequence of their status as women on the one hand, and as relatives of the “disappeared” on the other. Where a husband or head of household has become the victim of a “disappearance”, women are left to fend for themselves, as well as their families, while they are confronted with legal discrimination and often suffer economic hardship. By failing to take any legislative or other measures to respond adequately to this double discrimination, Algeria is also in breach of the obligation to non-discrimination under Article 2.

The agony of continuing uncertainty

Families of the “disappeared” have spared no effort to find their missing relatives and to elicit information from the authorities about their fate or whereabouts. In many cases, those who became active on behalf of a “disappeared” person were their wives and mothers. They have written to different ministries, the president, and the official human rights body. Many have submitted evidence, which they collected themselves, to the authorities about the circumstances of the “disappearance” and any indications they were able to obtain of where the person might be detained. Despite their repeated individual and collective efforts, there has been practically no movement by the authorities to clarify the fate of the “disappeared” (see “Disappearances” in the context section above). Amnesty International is not aware of a single case where a family has been provided with verifiable information on the fate or whereabouts of a person who “disappeared”.

⁴⁴ *Kurt v. Turkey* (24276/94) [1998], ECHR 44, 25 May 1998, paras. 133-4.

⁴⁵ *Blake v. Guatemala*, Judgment of January 24 1998, Inter-Am.Ct.H.R. (Ser. C) No. 36 (1998), paras. 113-116.

⁴⁶ CEDAW, *General Recommendation No. 19*, *supra* note 2, paras. 7 (b) and 7 (g), respectively.

Complaints filed in Algerian courts for abduction and illegal detention (*enlèvement et séquestration*) have either been stalled or closed without results.⁴⁷ Families who filed complaints have occasionally been summoned by the judicial authorities to be questioned about the information they submitted, but the investigations of the judicial authorities have generally not progressed. In some cases, they have been told that the “disappeared” person was never arrested. In other cases families have been told that their relatives were released or escaped from detention soon after the arrest, sometimes suggesting that they joined an armed group and were subsequently killed.⁴⁸ Such notifications of the alleged death of the “disappeared” person outside of detention are generally unconvincing, as families have not received the bodies of their relatives, nor have they been provided with details about the place and circumstances of the death. In addition, such notifications may be delivered years after the death reportedly occurred, with no explanation as to why the authorities failed to contact the family at the time of the death.⁴⁹

The key reason behind the lack of progress in these investigations is that the government refuses to acknowledge the true nature of the issue. The authorities continue to deny that state agents have been responsible for a pattern of “disappearances”. Although they recognize that thousands of people have gone missing in Algeria during the last decade, they do not accept the reality that thousands of people have “disappeared”, despite using this term to refer to the victims. The difference is fundamentally important. To describe a person as “missing” is to say nothing about the involvement of state agents. In Algeria, explanations given by the authorities for a person going missing include assertions that the person is evading arrest for an offence committed, has left the country or has been killed during armed confrontations. A person has “disappeared”, on the other hand, if there are reasonable grounds to believe that they were taken into custody by the authorities or their agents, and the authorities deny that the victim is or was ever in custody, or refuse to disclose his or her whereabouts or fate.

⁴⁷ To Amnesty International’s knowledge, no member of the security forces or state-armed militias has successfully been prosecuted for abduction and arbitrary detention, following complaints lodged by families of the “disappeared”. According to Articles 291 to 294 of Algeria’s Penal Code, abduction and arbitrary detention of a person is a crime punishable by five to 10 years’ imprisonment. The penalty may rise to life imprisonment if the victim is threatened with death.

⁴⁸ Ministry of Justice officials provided Amnesty International delegates, during a meeting in February 2003, with a breakdown of the 1,600 cases they said they had clarified. Some of those reported as “disappeared” were said to have been abducted or killed by armed groups, others to be evading arrest or to have been killed by security forces during armed confrontations. Significantly, in not one single “clarified” case had the Ministry of Justice drawn the conclusion that the person had “disappeared” following arrest and that consequently the state or state agents were responsible.

⁴⁹ For example, in July 2000 the mother of Sidi Mohamed Zoubirou, who “disappeared” on 30 August 1997, was notified by the judicial authorities that her son had been found dead by security officers one month after his “disappearance” in 1997, along with another body. The mother was reportedly also told that her son had been killed in a clash between security forces and an armed group. Sidi Mohamed Zoubirou “disappeared” after being arrested in Oran in front of several neighbours by plainclothes men believed to be agents of Military Security.

As long as the authorities persist in obfuscating the real problem, the anguish and uncertainty suffered by relatives of the “disappeared” continues. By providing information that either lacks credibility or is incomplete, the authorities continue to conceal the fate and whereabouts of the “disappeared”. This may aggravate the families’ anguish, as their worst fear that the person has died appears to be confirmed, while they are still denied the truth about the events that led to the death. As long as this is the case, it is impossible for the families to go through a normal bereavement and to come to terms with the death of the person and move on with their lives. By concealing the truth, the authorities also ensure impunity to members of the security forces and state-armed militias responsible for carrying out abductions, torture or extrajudicial executions.

Apart from notifications by judicial authorities, some families have obtained unofficial information from the security forces, or heard rumours about the “disappeared” person’s presumed death by others who were detained and later released. During their desperate search for information, some families also hear rumours about the fact that the “disappeared” person has been seen alive in a prison or detention centre. In this way, the families go through repeated cycles of hope and despair, depending on whether they believe the person to be dead or alive, or fear that they may be alive but ill-treated, or kept in inhumane conditions.

Amnesty International has received information that some wives of “disappeared” men have told their children that their father is working abroad, to protect their children or to avoid frightening them. This puts additional mental strain on the women, especially as, with the passing of time, the fear grows among the families that the “disappeared” person may in fact have died. This continuing uncertainty can have serious psychological consequences. Relatives of the “disappeared” do not have access to public rehabilitation programmes or psychological support. A psychologist who temporarily provided counselling to families of the “disappeared” in Algeria through a local “disappearance” organization has told Amnesty International that symptoms, such as chronic insomnia or nightmares, depressions and strong feelings of guilt were frequent among relatives of the “disappeared”. Their anguish is hard to treat because the acceptance process in which people learn to live with the fact that a relative has “disappeared” may take a long time, if not for ever. The fact that some families have repeatedly been summoned by the authorities to go over deeply traumatizing events, even where there is no apparent reason for such questioning to happen, may aggravate their suffering.

During the months of August and September 2004, most families of the “disappeared” who had in previous years written to the official human rights body about the “disappearances” were summoned by an ad hoc mechanism on “disappearances”, set up by presidential decree in September 2003 under the umbrella of the official human rights body (see “Disappearances” in the context section above). Families were asked to indicate their willingness to accept compensation payments for the “disappearance” of their relatives by signing a form. Amnesty International welcomes steps taken to ensure that families of the “disappeared” receive compensation for the wrongs they have suffered. The organization is concerned, however, that no indication was given to the families of how compensation payments would be allocated in a situation where no genuine investigations of the

“disappearance” cases had taken place. Neither were families informed of the amount of money that might be paid. Organizations working on behalf of the “disappeared” have publicly protested against the lack of transparency in the authorities’ handling of the issue of proposed compensation payments.

Amnesty International is concerned that current proposals for compensation are made without the political will to conduct investigations. Instead, there appear to be preparations for formally granting impunity to those who are believed to have been responsible for “disappearances”. The head of the ad hoc mechanism, Farouk Ksentini, has indicated repeatedly that he favours exemption from prosecution for security forces and state-armed militias over investigations of “disappearances”. In a speech on 1 November 2004 Algerian President Abdelaziz Bouteflika publicly stated his intention to introduce a general amnesty for all sides to the conflict, including security forces, in a stated effort to turn the page on a decade of internal conflict.

Amnesty International believes that compensation should never be a substitute for investigations into human rights violations and for bringing those responsible to justice. The organization is concerned that genuine investigations are not being proposed by the ad hoc mechanism and that other elements of reparation have yet to be addressed. Victims of “disappearance” and their relatives should have access to full redress, which may include restitution (of, for example, lost livelihoods and property); compensation; rehabilitation; satisfaction (such as restoration of their dignity and reputation and a public acknowledgment of the harm they have suffered); and guarantees of non-repetition.

Double discrimination

In addition to the lack of progress towards investigating “disappearances” throughout the period under review, no legislative or other measures have been introduced by the authorities to address the difficulties faced by female relatives, and in particular wives, as a consequence of the “disappearance”. These difficulties are both administrative and economic and result from the double discrimination against them as women on the one hand, and the lack of adequate legal provisions to address the problem of “disappearances” on the other.

Women do not have equal rights as parents and with regard to being the legal representative, or guardian, of their children, in violation of Article 16 [1 (d)] and [1 (f)] of CEDAW. Article 87 of the Family Code specifies that the father is the guardian (*tuteur*) of children under the age of 19. The guardian represents the children in all administrative, legal, educational, economic and social matters. A father’s signature is required when requesting a passport for a child, when enrolling them in a school, if the child is to take part in recreational activities, or when dealing with any other administrative and legal matters relating to the child. The father maintains guardianship even after a divorce, when the mother usually has custody of the children. Only if the father dies does the mother become the children’s guardian.

The only possibility provided for by law that enables the wife of a “disappeared” man to resolve some of the administrative problems related to their children is to declare the

person as missing, in accordance with Articles 109 to 115 of the Family Code. Article 109 defines a missing person as a person whose whereabouts are unknown and of whom it is not known whether they are dead or alive. An administrative ruling, or declaration of absence (*jugement d'absence*), has to be issued by a judge to define the status of the person as missing. According to Article 114 of the Family Code the declaration may be requested either by the heirs of the missing person or any other interested party, or the public prosecutor's office (*le ministère public*). In the latter case the family is summoned to a court hearing where the prosecutor may request the issuing of the declaration in the presence of a judge. The family has the right to refuse the issuing of the declaration.

Although the text of Article 109 uses the term "disappeared" (*disparu*), it refers to people who have gone missing, rather than people who were arrested and "disappeared" subsequently. The procedure is problematic when used to address the legal situation of a "disappeared" person because it takes no account of the fact that the person is believed to have been taken into the custody of the security forces and that their fate and whereabouts are concealed by the authorities. It is because the "disappeared" are victims of state abuses that their relatives are apprehensive about administrative procedures that necessitate dealing with the same authorities that deny knowledge of the person's detention or conceal their whereabouts.

The period following the "disappearance" is one of anguish, fear and profound confusion for the relatives. The immediate concern of wives is over the fate of the "disappeared" person. Fear for the "disappeared" person has consequently prevented many of them from approaching the authorities to try to resolve the problems which they themselves and their children encountered. Throughout the more than 10 years since "disappearances" began, the authorities have failed to provide an unambiguous legal definition of the status of a "disappeared" person, or to take specific legislative measures to address the practical problems faced by the families, and in particular wives, as a consequence of the "disappearance".

In some parts of Algeria, such as the capital Algiers, hundreds of families of the "disappeared" have apparently been summoned by the judicial authorities since 1999 to initiate procedures for the issuing of declarations of absence. Many families reacted with suspicion to the fact that the prosecution requested the issuing of such declarations. Families who were not in desperate need to provide legal proof of the "disappeared" person's absence often refused the issuing of the declarations. Such refusals are partly linked to the fact that a declaration of absence is also the prerequisite for declaring a missing person dead. If the person has not returned after a period of four years, he or she may be declared dead by a declaration of death (*jugement de décès*), in accordance with Article 113 of the Family Code. As in the case of declarations of absence, a declaration of death may be issued either at the request of the family or other person concerned, or at the request of the public prosecutor's office.⁵⁰ Although this procedure does not affect any criminal claims relating to the abduction and illegal detention of the "disappeared" person, relatives of the "disappeared" have

⁵⁰ Article 114 of the Family Code.

perceived it as a threat to their right to investigations and to their claim that the person might still be alive.

In other parts of Algeria, the judicial authorities have apparently not initiated procedures for issuing declarations of absence, leaving it up to the families to request them. In some provinces, such as Relizane, it seems that hardly any such declarations have been issued. This may be due, on the one hand, to a different approach by the local judicial authorities. On the other hand, it is also likely to result from varying levels of awareness and access to legal advice among the families in different parts of the country. As a consequence, the extent to which women have obtained legal documentation of their husband's absence varies significantly from one province to another.

Wives of "disappeared" men who do not have such documentation continue to experience practical problems as a consequence. For example, beginning in the school year 2000-2001 the government introduced a school subsidy for economically disadvantaged families of 2,000 Algerian dinars (approximately US\$30) for each enrolled child.⁵¹ Several wives of the "disappeared" told Amnesty International in 2003 that they were at first unable to claim these benefits because this required evidence of the father's income. Once they managed to obtain either a declaration of absence, or other legally valid documentation of the absence of the father, they were able to obtain the subsidy.

In addition to administrative problems, wives and female relatives of the "disappeared" have also frequently encountered economic hardship. The "disappearance" of a husband or head of household has meant that many women have found themselves having to provide for themselves as well as their children. The "disappearance" of a son who was supporting a family with his salary may also worsen the economic situation of women in the family, in particular older women who are divorced or widowed and without an independent income. One problem frequently encountered by women whose husbands have "disappeared" is that they are not legally able to access pensions, savings, property, or other material belongings that are in their husband's name. Unlike administrative problems, such difficulties cannot be resolved on the basis of a declaration of absence, but necessitate the issuing of a declaration of death.

Although women are entitled to have bank accounts, in the vast majority of cases a family's account is held in the name of the husband. Similarly, property is likely to be formally registered in the husband's name. Where the wife of a "disappeared" person has obtained a declaration of absence, an inventory is drawn up of the missing person's material belongings and a trustee (*curateur*) designated to manage them.⁵² Even though the wife of a "disappeared" man may become a trustee for the property and belongings held in the name of

⁵¹ See Algeria's second periodic report, *supra* note 1, p. 30.

⁵² Article 111 of the Family Code.

her husband, she cannot use these to cover the family's living expenses after the "disappearance".⁵³

Article 115 of the Family Code stipulates that funds and other material belongings of a missing person cannot be accessed or divided for inheritance until the person's death, at which point they are distributed in accordance with the inheritance provisions of the Family Code, unless a lawfully drawn out will stipulates otherwise. Wives of the "disappeared" cannot therefore access family assets until they complete the process leading to a declaration of death.

Similar problems are faced by women whose husbands have "disappeared" and who would be entitled to a pension if they were widows. Widows of men who were working in formal employment with according social security are entitled to a pension after the death of their husbands.⁵⁴ However, wives of men who have "disappeared" are not able to claim such pensions, until a declaration of death is issued.

The current lack of access to a husband's pension, property or savings is particularly serious as female relatives of the "disappeared" suffer the double discrimination of, on the one hand, discrimination against women and, on the other, discrimination against families of the "disappeared". As women, they are discriminated against when seeking employment to provide for their family. The majority of these women were not formally employed prior to the "disappearance" of their husband, especially those who lived outside big cities. Women are less likely than men to have received education or training that would facilitate their entry into the labour market (see Articles 10 and 11). High rates of unemployment further decrease their chances of finding formal employment. Some wives of the "disappeared" have faced additional difficulties as a consequence of the social stigma attached to the "disappearance" of their husband. Many women who have become heads of household as a consequence of a "disappearance" consequently have to find informal ways of securing an income for themselves and their families, but this also means they have less employment protection than in formal employment.⁵⁵

Families of the "disappeared" have so far not had access to any economic benefits that would alleviate economic hardship, as is the case for victims of armed group abuses. This is despite the fact that proposals of social benefits for the families were discussed during 2002 and 2003. CNCPPDH president Farouk Ksentini had at the time advocated such assistance and expressed the view that these payments should be unconditional, thereby avoiding their

⁵³ Amnesty International is aware that some wives of "disappeared" men have been able to persuade banks to make money contained in bank accounts in the husband's name available to them. However, these are exceptional cases which are conditional on the good will of the bank. In contrast, they seem generally unable to access property held in the husband's name.

⁵⁴ See Articles 30-42 of Law no. 83-12 of 2 July 1983, published in the Algerian official bulletin (*Journal Officiel*) of 5 July 1983.

⁵⁵ They may be working as cleaners or child minders in wealthier families, or produce handicrafts and other items for sale.

use as a means to dissuade families from their legitimate protest activities.⁵⁶ The ad hoc mechanism created in 2003 has an explicit mandate to elaborate proposals for measures of assistance, as well as compensation, for families of the “disappeared”.⁵⁷

Wives of those abducted and killed by armed groups

Wives and other female relatives of the thousands of people abducted and killed by armed groups may also face difficulties with respect to economic and administrative matters as a consequence of legal discrimination against women. Where the status of the person abducted and killed has not been legally clarified, their relatives may face some of the same problems encountered by wives of the “disappeared”.

Wives of men who were abducted by armed groups and are presumed to have been summarily killed are not opposed in principle to the issuing of declarations of death. On the contrary, as they generally do not nurture the hope of their relatives returning alive, a declaration of death is seen as a step towards alleviating financial problems and administrative difficulties relating to family life. For a variety of reasons many of these families did not initiate the issuing of a declaration of absence immediately after the abduction. As in the case of families of the “disappeared”, they may have been unaware of the legal provisions.

Somoud is a non-governmental organization that provides legal advice to, and campaigns on behalf of, families whose relatives have been abducted and are presumed to have been killed by armed groups. They point out that families of those abducted who request a declaration of absence several years after the abduction, are still required by the authorities to wait for the full period of four years before they can obtain a declaration of death. During this period, women who have become heads of household are not able to access pensions or any savings or property held in the name of the person who was abducted, and they are likely to face similar problems in relation to family matters, such as the education of their children.

⁵⁶ Families of the “disappeared” had expressed their fear that, by offering them material benefits, the authorities may be exploiting the economic hardship which many experience to dissuade them from their campaigning and protest activities. This fear may not be entirely unfounded. Families of the “disappeared” in the province of Relizane told Amnesty International in early 2003 that they had been offered small sums of money and other material benefits through an office at the regional government authority, on condition that they stop their weekly protests.

⁵⁷ The presidential decree of 11 September 2003 stipulates that the mechanism’s responsibility “*de concevoir, en liaison avec les autorités publiques, les mesures d’aide et d’indemnisation au profit des ayants-droit des personnes disparues*”.

ARTICLE 3

In its General Recommendation No. 18, and with reference to Article 3 of the Convention, the CEDAW Committee requested that states parties report on the situation of disabled women and on measures (including special measures) taken to deal with their particular situation and to ensure full equality for these women, including their participation in all areas of social and cultural life.⁵⁸ Amnesty International would like to draw attention to the fact that tens of thousands of civilians have been injured by firearms, in bomb explosions or other attacks on civilians since 1992. The organization believes that thousands of women may be physically disabled as a consequence of such injuries. In light of the double discrimination faced by these women it is a matter of concern that the state party report does not take notice of this problem, which in turn raises questions about the extent to which measures have been taken by the government to address the situation of disabled women.

ARTICLE 7

The participation of Algerian women in public life is restricted, partly as a direct consequence of their unequal status in the family. A 1997 study found that some 60 per cent of married women in Algeria did not go out of the house without asking their husband's permission.⁵⁹ The persistence of such customary practice, along with discriminatory family legislation, reinforces the notion of a woman's role being confined to the domestic sphere. Discrimination in women's access to education and the labour market impairs their ability to participate in political and public life. The persistence of female adult illiteracy is a serious impediment to women's equal participation in elections. The representation of women in parliament doubled between 2003 and 2004, but remained weak at six per cent of parliamentary seats.⁶⁰

Amnesty International is particularly concerned about the restrictions imposed on non-governmental organizations campaigning on the issue of "disappearances", which constitute a violation of Article 7 (c) of CEDAW. Restrictions on these organizations limit the ability of female relatives of the "disappeared" to publicly express their views about the problem of "disappearances" and to participate in finding solutions to the problem, as well as to their own situation.

In almost all cases, it is men who have "disappeared", so that women have become the main protagonists of the movement campaigning for truth and justice for their

⁵⁸ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 18, Disabled women* (tenth session, 1991), UN Doc. HRI/GEN/1/Rev.1.

⁵⁹ See Rebzani, Mohamed, "Incidence de l'activité professionnelle sur le rôle familiale", in *Les Cahiers de l'Orient*, no. 47, 1997, p. 96.

⁶⁰ Inter-Parliamentary Union (IPU) figures, quoted from United Nations Statistics Division: Millennium Indicators 2004.

“disappeared” relatives.⁶¹ Female relatives of the “disappeared” have become key activists in this movement. Many of these women continue to campaign on behalf of their “disappeared” relatives, including the holding of weekly demonstrations outside local and national government offices. In this way, women have transcended the boundaries of their social roles as being confined to the domestic sphere and become campaigners for human rights in the public sphere. They are today the backbone of one of the strongest human rights movements in Algeria.

Over the past six years, five organizations working on “disappearance” issues have been founded in different parts of the country; one organization each in Relizane and Oran in western Algeria, one in Constantine in the east, and two in the capital Algiers.⁶² They form an essential support structure for relatives of the “disappeared”. They provide a framework for solidarity amongst families of the “disappeared” and a focal point for campaigning activities. The organizations have documented “disappearance” cases and facilitate the provision of legal advice on issues linked to the “disappearance”, particularly the situation of female relatives of the “disappeared”. In addition, the Comité SOS disparus in Algiers temporarily set up psychological support services for female relatives and children of the “disappeared”. Other organizations are considering extending their activities to training programmes and income-generating schemes for female relatives.

To date, owing to a variety of administrative and legal obstacles, none of the “disappearance” organizations has been able to legally register their organization in Algeria. As a consequence, their ability to function is seriously hampered. Most of them have not been able to set up offices,⁶³ and none of them can process applications for funding within Algeria.

Although the weekly protest meetings outside government offices are largely tolerated by the authorities, relatives of the “disappeared” face police harassment and intimidation, especially outside the capital Algiers. When they organize peaceful demonstrations or marches in large cities, their protests have sometimes been prevented or violently dispersed by police.⁶⁴ Most recently, a demonstration of some 300 relatives in Constantine was violently broken up by police on 20 September 2004. The wife of a “disappeared”, Louiza Saker, was detained by police for six hours following the

⁶¹ The movement, which is commonly referred to as “mothers of the ‘disappeared’”, is composed mainly of women who are either mothers or wives of “disappeared” men.

⁶² Committee of the Families of the Disappeared (Comité SOS disparus) and the National Association of Families of the Disappeared (Association nationale de familles de disparus).

⁶³ The Comité SOS disparus, which maintains close links with the France-based Collective of Families of the Disappeared in Algeria (Collectif des familles de disparu(e)s en Algérie), has been running an office in Algiers since 2001 under the umbrella of the Algerian League for the Defence of Human Rights (Ligue algérienne pour la défense des droits de l’Homme, LADDH). They have also been able to support the opening of an office in Oran.

⁶⁴ Such demonstrations are usually held without obtaining authorization from the authorities. Representatives of organizations of families of the “disappeared” argue that their requests for authorization would be refused in connection to the fact that the state of emergency, imposed in 1992, remains in place. In addition, a general ban on demonstrations in the capital has been in force since October 2001.

demonstration, and only allowed to leave after she signed a statement, of which she did not receive a copy, committing herself to cease all protest activities. She told Amnesty International that she had been shown knives, stones and teargas, which the police alleged having seized from families, although this allegation was apparently unfounded. Another demonstration, planned for 5 October 2004 in the capital Algiers, was prevented by police who had sealed off the area surrounding the presidential palace, which was to be the starting point of the demonstration. Police officers reportedly detained more than 100 relatives of the “disappeared” to prevent the demonstration from taking place. Several women were apparently beaten by police as they resisted arrest.

ARTICLE 9

Among the reservations made by the Algerian government upon ratification of CEDAW is a reservation to Article 9 (2) of the Convention, which provides that states must grant equal rights to men and women with respect to the nationality of their children. Reservations were made on the basis of the Nationality and Family Codes, along with a list of all provisions of national law that conflict with the provisions of Article 9 (2).

Under Article 6 of the Nationality Code, women only have the right to pass on their nationality to their children if the father is either unknown or stateless, or if the child is born in Algeria to an Algerian mother and a foreign father who was born in Algeria. Article 41 of the Family Code provides that a child is affiliated to its father through legal marriage. If the mother and father are not married, the child does not acquire Algerian nationality at birth if the father does not officially recognize the child. Children born in Algeria who do not have a birth right to Algerian nationality may acquire the nationality under Article 26 of the Nationality Code, if the Ministry of Justice does not object.

In its concluding observations in 1999, the CEDAW Committee expressed concern “that mothers cannot transmit their nationality to their children in the same way that fathers can. Citizenship is a fundamental right which men and women must be able to enjoy equally.” The Committee recommended “the revision of legislation governing nationality in order to make it consistent with the provisions of the Convention.”⁶⁵

At the time of writing, amendments had been proposed to the Nationality Code, apparently to accord mothers and fathers equal rights in passing on their nationality to their children. Article 41 of the Family Code would consequently lose its effect on the nationality of children, as they could become Algerian citizens by being born to an Algerian mother. Amnesty International welcomes these proposed changes and hopes that Algeria will be withdrawing its reservation to Article 9.

⁶⁵ CEDAW, *Concluding Observations: Algeria*, *supra* note 18, paras. 83-84.

ARTICLES 10 AND 11

Economic independence is recognized as a key factor in addressing gender discrimination. It is also essential to enable women to confront violence, as it allows them to leave violent relationships. Equal access to education is a prerequisite for women's equal access to labour and employment. Access to education for girls in Algeria is not on a par with boys. According to a 2003 study, the rate of women and girls who had never been in school education was 30 per cent, as compared to 16.9 per cent of men, with the figure of women without formal education being even higher in rural areas.⁶⁶ The number of girls who completed secondary school education was 63.5 per cent of the equivalent figure for boys in 2000.⁶⁷ The female illiteracy rate among the population aged 15 and above remains almost twice that of men.⁶⁸

According to World Bank figures, women's participation in the labour force rose by a half between 1990 and 2000.⁶⁹ However, no significant increase was reported during the period under review, and the share of women remained low at about a third of Algeria's labour force. At the same time, the female unemployment rate has risen in recent years to around a third of the female work force. In 2000 it was almost as high as the unemployment rate among men.⁷⁰ Unemployment of women is particularly a problem among women who have lower or no professional qualifications.

The legal subordination of married women to their husbands, as specified in the Family Code, prevents them from fully enjoying their rights under various provisions of CEDAW, including their rights to equal participation in public and political life and to equal access to education and employment under Articles 7, 10 and 11. For example, although there is no statutory provision that prevents a married woman from working, as stated in Algeria's report,⁷¹ her ability to do so is conditional on her husband's consent. Under the Family Code as it is currently in force, married women have a legal duty to obey their husbands (see Articles 15 and 16). Where a husband disagrees with his wife's wish to work, he may take measures to enforce the wife's duty to obey him and, if she does not comply, threaten to divorce her. As a consequence of discriminatory divorce provisions, being divorced can leave a woman homeless. In practice therefore, women usually cannot work if their husband does

⁶⁶ *Enquête Algérienne sur la Santé de la Famille (Enquête pan arabe sur la famille) : Rapport préliminaire*, June 2003; quoted from *Nations Unies: Le premier rapport sur les objectifs de développement du millénaire pour l'Algérie*, February 2004. The figures are 40.2% of rural women and 22.2% of rural men respectively.

⁶⁷ Source: World Bank 2004, quoted from UNIFEM Report *Progress of Arab Women 2004*, p. 50.

⁶⁸ Female literacy rates in the age group 15 to 24 improved during the period of review, from 83.6 to 86.7% (United Nations Statistics Division: Millennium Indicators 2004). The World Bank rated overall adult illiteracy of women at 43% in 2000, as compared to 23.7% of men (World Bank Indicators 2004), while the United Nations Economic and Social Commission for Western Asia (ESCWA) rated female adult illiteracy at 48.7% (quoted from UNIFEM Report *Progress of Arab Women 2004*, p.112).

⁶⁹ Their share was 20.1% in 1990 and 31.2% in 2000 (World Bank database of Gender Statistics 2003).

⁷⁰ World Bank figures rated female unemployment in 2000 at 29.7%, male unemployment at 33.9% (World Bank database of Gender Statistics 2003).

⁷¹ Algeria's second periodic report, *supra* note 1, p. 13.

not approve. Many women are only able to participate in the work force as long as they are unmarried. Provisions for child care in Algeria's labour legislation do not facilitate the sharing of this responsibility between men and women, as required by Article 5 of CEDAW. Other provisions of labour legislation discriminate against women, even though they are presented as measures to protect women. For example, women are banned from night work and from working on public holidays.

A recent development has been the introduction of legislation on sexual harassment in the workplace, which is part of a series of current amendments to the Penal Code. The text of the draft law was not available to Amnesty International prior to finalizing this briefing, but the organization welcomes steps that may contribute to improving women's access to employment.

ARTICLE 14

Amnesty International is concerned that the Algerian government has not met its obligation under Article 14 of CEDAW to protect rural women from violence and to end discrimination against women in rural areas. Civilians in rural areas in northern Algeria were the main victims of indiscriminate killings by armed groups, and women in these areas have been most at risk of abduction and rape by armed groups. At the same time, women from rural areas who survived such assaults were particularly exposed to rigid attitudes which hold them responsible for the abuse and for having brought shame upon their family, while they had the least access to rehabilitation and support facilities. The government of Algeria has failed to exercise due diligence in protecting women from such attacks and in providing protection, and assuring support and redress to survivors of attacks.

In rural areas such as the province of Relizane, women are particularly affected by the adverse economic and social impact of the "disappearance" of a husband or head of household and often live in poverty. It is still uncommon for rural women to be in formal employment, and their prospects of finding employment are particularly limited. The problem is exacerbated by the fact that, in this area, several houses of families of the "disappeared" were destroyed by the perpetrators of the "disappearance" to punish the entire family. Some female-headed households of families of the "disappeared" have, up to 10 years later, not found a new home.

ARTICLES 15 AND 16

During the period under review, discrimination against women in the family, legalized by discriminatory family laws, has continued. As has been pointed out in previous sections of this document, discrimination against women in the family precludes their equality in society, as guaranteed in numerous provisions of CEDAW. This section will focus on the impact of discriminatory family laws on violence against women.

The Algerian government has stated in its reservations to Articles 15 (4) and 16 of CEDAW that it will only implement these articles in so far as they do not conflict with the Family Code. In its current form, the Family Code conflicts with the provisions of Article 16, which is one of the key articles of the Convention. In light of this, Amnesty International is concerned that Algeria's reservations to Article 16 are broad and unspecific and that it has not reported on the impact of the persistence of these reservations on implementation of CEDAW during the period under review.

The reservation entered to Article 15 (4) of the Convention, although much more narrow and specific than the reservation to Article 16, illustrates how reservations protect laws that facilitate violence against women. Article 15 (4) provides for equality between men and women in their freedom to choose their residence. Algeria has declared that this provision should not conflict with Article 37 of the Family Code, which stipulates that a husband has the duty to provide for his wife, except where the wife has abandoned the marital home. Combined with a total absence of support mechanisms for women in violent relationships or for women who might wish to leave such relationships, this provision effectively restricts the freedom of movement of married women. It facilitates violence against women in so far as a married woman may be unable to leave a violent relationship. With its reservation to Article 15 (4), Algeria is protecting a legal provision that weakens women's protection from violence in the family.

Violence in the family (Article 16 [and Article 5])

In its General Recommendation No. 19, the CEDAW Committee has described family violence as "one of the most insidious forms of violence against women", which is prevalent in all societies.⁷² In societies that have been affected by violent conflicts, rates of interpersonal violence are believed to remain high, or even to have increased, as the conflict comes to an end. There are no comprehensive statistics that would make it possible to establish a relationship between the internal conflict and the incidence of violence against women in the home in Algeria. Women's activists who work with victims of violence in the family, however, have told Amnesty International that, in their view, violence in the family

⁷² CEDAW, *General Recommendation No. 19*, *supra* note 2, para. 23.

has increased in recent years. In its report to CEDAW the Algerian government has also expressed its concern that this violence is increasing.⁷³

Current levels of violence in the family in Algeria may have been facilitated by the conflict in so far as violence has become more widespread and socially acceptable. In addition, violence in the family is facilitated by discrimination against women and women's lack of economic independence (see Articles 10 and 11). The failure to respect the rule of law during the conflict and to implement existing safeguards to protect women from violence are also believed to have impacted on violence in the family. Other contributing factors are the decline in living standards over recent years, the high rate of unemployment, widespread drug use and the continuation of the housing crisis, which has led to overcrowding of dwellings.

Women's groups have only recently begun to break the taboo surrounding the subject of violence in the family. There has been an increase in public debate, and several seminars have been held on the subject. Amnesty International welcomes the Algerian government's openness with regard to its reporting on violence in the family. The government has acknowledged not only the fact that violence in the family is increasingly a problem in Algeria, but also the absence of specific legislation protecting women from violence and of statistics on the prevalence of the problem. To date, the police, social services, courts and other state bodies that serve as first points of contact for victims of family violence apparently do not collect relevant data. This raises concerns that state institutions may still fail to take concrete measures to respond to the problem of violence in the family. Amnesty International welcomes the fact that a study on violence against women in Algeria was conducted between December 2002 and June 2003. The study was carried out under the auspices of the National Institute for Public Health (Institut National de Santé Publique, INSP), bringing together in an unprecedented way representatives from the health, justice, security and social authorities, as well as intergovernmental and national non-governmental organizations active in the field of violence against women.

Preliminary results of the study were made public on the occasion of a seminar on the subject held around International Women's Day in 2004. The study was established on the basis of 9,033 cases of all forms of physical and psychological violence against women. The period of time during which these cases were recorded has not been specified. Media reports revealed that 44 per cent of Algerian men were believed to have committed acts of physical violence against their wives.⁷⁴ According to the same reports, the organizers also endorsed the findings of an earlier study published in 2001 which had estimated that some 9,000 women seek hospital treatment every year as a result of violent attacks, the vast majority of which take place in the family.⁷⁵

⁷³ Algeria's second periodic report, p. 16. Although the term "violence against women" is employed, the context suggests that the acknowledgement of an increase in violence against women refers more specifically to violence in the family.

⁷⁴ *El-Watan*, 28 April 2004.

⁷⁵ See Fédération internationale des ligues des droits de l'Homme (FIDH) : *Algérie, les violences contre les femmes : L'état des lieux en 2001*. Briefing to the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences.

In a communiqué issued by the organizers, a number of areas of concern were highlighted from the results of the study. Almost three quarters of the acts of violence were perpetrated against women in their own home. The majority of these attacks were beatings and other physical assaults. Five per cent of the attacks consisted of sexual assaults, of which half were classified as rape.⁷⁶ The majority of attackers were found to be the victims' husbands, followed by people known to the victims and other members of their family. The study also confirmed that women in disadvantaged strata of society are more vulnerable. More than a quarter of the women (26.8 per cent) were illiterate, while women with university education represented only 5.6 per cent of the sample.

Amnesty International is not able to assess the validity of these findings and had not had access to the study prior to finalizing this briefing.⁷⁷ The organization believes that the study may be an important step towards unearthing the root causes of violence in the family in Algeria and welcomes in particular the organizers' intention to propose an action plan to prevent such violence and provide care for the victims of violence, as well as rehabilitation measures for violent husbands.

Laws facilitating violence in the family

It is not clear to what extent the action plan will include proposals to revise discriminatory laws, which are a key factor facilitating and perpetuating violence in the family in Algeria, and which are currently covered by Algeria's reservations to CEDAW. A woman's position in marriage is inferior to that of her husband as a consequence of her legal duty to obey her husband, as prescribed by Article 39 of the Family Code. This inequality is reinforced by women's unequal status at the dissolution of marriage, and by their lack of access to housing and revenue in case of a divorce.

According to Article 48 the divorce of a marriage may be pronounced either at the will of the husband, upon mutual agreement of husband and wife, or at the request of the wife under one of seven specified conditions (see below). Even though Article 49 provides that the divorce has to be pronounced by a judge, after a period of attempted reconciliation, the husband's prerogative to unilaterally dissolve the marriage without having to give a reason is widely seen as legalizing the custom of men repudiating their wives without any due judicial process to safeguard the rights of the women.

A woman who has been divorced by her husband does not have an automatic right to adequate housing. Article 52 provides that, if there is only one family home, as would normally be the case, it goes automatically to the husband in case of divorce. As a consequence, women who do not have children will become homeless as a consequence of a divorce if they are not able to go back to their own families, or otherwise find accommodation. If the couple has children, the husband may be required to provide housing

⁷⁶ According to press reports, the study does not seem to have established numbers of women killed as a consequence of violence in the family.

⁷⁷ The study was due to be made public on 23 November 2004.

for the wife if she obtains custody of the children.⁷⁸ This only applies if he has the means to do so, and if the wife is not housed by her family. No threshold is specified in the law as to when a husband is considered to have the means to provide accommodation. Women with children can therefore equally be left homeless as a consequence of the unilateral will of the husband to divorce. The husband has to pay maintenance for his children, but he does not have to provide for his divorced wife even if she has no other means of support.

Women have almost no legal protection against this unilateral dissolution of marriage, and against being made homeless as a consequence. According to Article 19 of the Family Code, a husband and wife can stipulate any additional conditions for their marriage in a marriage contract, as long as these do not contradict the Family Code. Theoretically, this provision may be used by women to increase protection from homelessness after divorce, or to ensure that they are granted an income. However, in practice this is difficult, as the contract may not directly contradict the Family Code, and designing such contracts is subject to the initiative of each woman.

Article 52 of the Family Code provides that a woman may be compensated if the judge finds that her former husband has abused his right to divorce her, but it is not specified what constitutes an abuse, or what compensation entails. Lawyers and women's activists have reported to Amnesty International that in practice the requirement of a ruling by a judge in order to effect a divorce is widely disregarded, and women are often simply disowned and thrown out onto the street by their husbands.

Lack of awareness of the minimal protection afforded by the law means that most women whose husbands dissolve the marriage are unlikely to legally challenge the procedure. In addition, they may not have the means to afford legal advice. Although provisions for legal aid to those who cannot afford a lawyer exist, they are rarely used in practice. In light of the acute housing shortage and high rates of unemployment, women's rights activists have raised concerns that divorced women may be left to beg in the street, or forced to engage in illegal activities, such as prostitution, to make a living. There is no statistical information to identify the extent of the problem. On 8 March 2004 the Algerian radio reported that emergency centres around the country receive dozens of women every day asking for a shelter for themselves and their children after being divorced.⁷⁹

Discriminatory divorce provisions reinforce women's unequal position in the family, as a husband may try to enforce his wife's duty to obey him and, as a last resort, is able to threaten to divorce her if she does not comply with his will. This may include the husband's decision to marry a second wife. Polygamy is permitted under Article 8 of the Family Code. Article 8 stipulates that a husband has the duty to inform his wife prior to contracting a second marriage and that the wife may request a divorce if she does not consent. In practice

⁷⁸ In the majority of cases the wife obtains custody of the children. She cannot obtain, or may lose, the custody if she is found to have committed an "immoral act" (Article 52), or if she is unable to fulfil the duties of the custodian, including bringing up the children in the Muslim faith (Articles 67 and 62). The mother's custody of the children may also be withdrawn if she moves to another country; but the interest of the child should prevail (Article 69).

⁷⁹ Report on Algerian radio, 8 March 2004.

women often face a choice between losing their family home and agreeing to a polygamous relationship.⁸⁰

Most importantly, the discriminatory divorce provisions put women at increased risk of violence in the home, as women may feel that the economic consequences of a divorce leave them no option but to remain in a violent relationship. There are very few shelters for women, and most of these are concentrated in the area of the capital. Even if a woman accepts the economic and social consequences of divorce, her own right to request a divorce is limited to specified conditions. These relate to the husband's absence or his failure to fulfil his duties as a husband, which may be difficult or embarrassing to prove in court.⁸¹ One of these conditions is described as a "proven severely reprehensible immoral act" (*faute immorale gravement répréhensible établie*) committed by the husband. This is open to interpretation and does not explicitly include violent behaviour by the husband as a ground for divorce.

According to press reports on proposed amendments to the Family Code, the new draft law obliges the husband in case of divorce to provide appropriate accommodation for the wife, but only if she has custody of the children. In addition, women are to be given the right to request a divorce if there are regular arguments between husband and wife which make it impossible for them to live together, or if the husband has violated a marriage contract, in which husband and wife may stipulate any conditions for their marriage that they deem necessary. While these proposed amendments constitute improvements to the current law, they do not address the problematic right of the husband to end the marriage unilaterally. Polygamy is to remain legal, but to be made conditional on authorization by a judge, which may render it more difficult to contract an additional marriage if the first wife disagrees. Article 39, which provides for the duty of the wife to obey her husband, is to be abolished.

Amnesty International welcomes these proposed changes, as they may be important steps towards protecting women from violence in the family in the long run. These changes, however, would need to be accompanied by wide-ranging awareness-raising campaigns, and by other necessary measures to ensure women's protection in practice, failing which their

⁸⁰ According to a 1998 census, polygamy affects some 2-4% of marriages, and the trend is apparently decreasing; see Kateb, Kamel: "Changements démographiques et organisation familiale en Algérie", in: *Maghreb Machreq. Monde Arabe*, no. 176 (2003), p.98.

⁸¹ According to Article 53, a wife may request a divorce for one of the following reasons: "*pour défaut de paiement de la pension alimentaire prononcée par jugement à moins que l'épouse eut connu l'indigence de son époux au moment du mariage sous réserve des articles 78, 79 et 80 de la présente loi ; pour infirmité empêchant la réalisation du but visé par le mariage ; pour refus de l'époux de partager la couche de l'épouse pendant plus de quatre mois ; pour condamnation du mari à une peine infamante privative de liberté pour une période dépassant une année, de nature à déshonorer la famille et rendre impossible la vie en commun et la reprise de la vie conjugale ; pour absence de plus d'un an sans excuse valable ou sans pension d'entretien ; pour tout préjudice légalement reconnu comme tel, notamment par la violation des dispositions contenues dans les articles 8 et 37 ; pour toute faute immorale gravement répréhensible établie.*"

Article 54 also allows a woman to initiate a divorce if she pays her husband compensation (*réparation [kholâ]*). If husband and wife cannot agree on the sum a judge may set the amount of compensation, which is not to exceed the value of the dowry.

effectiveness may be seriously undermined. In addition, some of the provisions that facilitate violence against women, such as those related to divorce, are reportedly not due to be amended. Amnesty International hopes that these and other discriminatory provisions in the Family Code will also be amended in order to bring Algeria's national legislation into line with its obligations under CEDAW.

Lack of protection

Another issue related to violence against women in the family is the inadequacy of existing legislation to punish perpetrators and to protect women who make complaints. Amnesty International is not aware of any statistics on the number of men prosecuted for violence in the family, and Algeria's report to the CEDAW Committee confirms the absence of statistics in this area. Women's organizations have told Amnesty International that prosecution for violence in the family is extremely rare, partly as a consequence of a lack of adequate legislation. In its 1999 concluding observations, the CEDAW Committee expressed its concern at "the absence of legal texts that specifically protect women who are victims of domestic and sexual violence" and recommended that the government take legislative and other appropriate measures to improve protection of women from such violence.⁸² In the absence of any other protection for woman from violence in the home the only legal protection is that of the Penal Code.

Article 264 of the Penal Code provides that violent acts against another person that cause illness or incapacity to work (*maladie ou incapacité totale de travail*) for more than 15 days are punishable by two to five months' imprisonment and a fine of between 500 and 10,000 Algerian dinars (approximately US\$7 to US\$135). If the violence causes permanent injury the penalty may increase to between five and 10 years' imprisonment, and if the victim suffers injuries that lead to death the sentence may increase to up to 20 years. If the threshold of more than 15 days' incapacity to work is not met, the penalty is between 10 days' and two months' imprisonment and/or a fine of 100 to 1,000 Algerian dinars.

According to lawyers and women's activists, in practice, a husband who commits violent acts against his wife is not arrested unless the threshold of 15 days' incapacity to work specified in Article 264 is met. The 2003 INSP study on violence against women indicated that acts of violence in the family consist mainly of beatings and other physical assaults. These may not always result in injuries so serious as to result in illness or incapacity to work for more than 15 days. Even where they do, a woman would have to have her injuries certified by a forensic doctor in order to take legal action against her husband, which may be difficult. She may either be unable or not allowed to leave the house, or there may not be a forensic doctor within her reach. Women may also be unaware that they require such a certificate in order to take legal action and may not have access to competent legal advice.

Algeria's report to the CEDAW Committee confirms that virtually no cases of violence in the family are brought to court in Algeria.⁸³ According to Algerian women's

⁸² CEDAW, *Concluding Observations: Algeria*, *supra* note 18, paras. 79-80.

⁸³ Algeria's second periodic report, *supra* note 1, p. 17.

activists the threat of the economic and social consequences of a divorce prevents most victims of violence in the family from taking legal action. In practice, a woman is likely to take legal action only if she knows that she has somewhere else to live. In the rare cases in which violence in the family is taken to court, no specific measures are taken to protect a woman while the judicial investigation takes place. Only once a person is accused of a crime punishable by a prison sentence may a judge subject the defendant to measures of judicially imposed constraints (*contrôle judiciaire*), which may include banning the person from a place or from meeting a particular person, or restricting him or her to a geographical area.⁸⁴ According to Algerian lawyers use of this measure is extremely rare. Women may be subjected to pressures from their husband, their husband's family, or their own family to drop the case. As a consequence, reports of violence in the family generally surface only if a woman needs to seek hospital treatment, or if she is thrown out of the house.

In the case of marital rape women face even more serious obstacles when it comes to reporting the crime, as they encounter both the difficulties experienced by victims of violence in the family and those encountered by victims of rape (see section on sexual violence under Article 2). In addition, they may have to deal with a lack of awareness among law-enforcement officers of marital rape as a crime. Amnesty International is not aware of a single case of successful prosecution of rape in marriage.

SOS Femmes en détresse (SOS Women in Distress) is a woman's organization that provides shelter and advice to women victims of violence in the family and campaigns against violence against women. They run listening centres for women who suffer violence in the family in Algiers and in Blida and report that they frequently receive phone calls from women who are either too scared to leave the house or prevented from doing so by their husbands. The organization has applied to the authorities for their telephone help lines to be free of charge for the callers, but this application has not been successful.

The persistence of stereotypes can have a direct impact on violence against women and presents obstacles when raising awareness about the issue. A recent experience of the organization SOS Femmes en détresse confirms that violence in the family is still an unpopular and often taboo subject. In early 2001 the organization produced a television advertisement to raise awareness of their help lines for women who suffer violence in the family. The advert contained a scene of a husband beating his wife. Although the organization claims to have submitted it for approval to a commission of the state-run television, which has apparently viewed it, the commission has reportedly not responded to the organization's request for permission to broadcast their advertisement. Members of the organization believe that the reason may be that its contents were considered too shocking or controversial.

According to SOS Femmes en détresse women who are beaten or otherwise ill-treated by their husbands are often dissuaded by people in their social environment from reporting the abuse they suffer. What happens inside the family is largely considered to be taboo, and interference in the domestic sphere is actively discouraged, including by state agents. Police officers are generally reluctant to take action on cases of violence in the family, or even to

⁸⁴ Article 125 (b) (1) of the Criminal Procedure Code.

register complaints, seeing it as interference, unless a woman has been murdered. In the experience of SOS Femmes en détresse, this is largely due to lack of training and awareness of the problem of violence in the family.

The CEDAW Committee specifically recommended in 1999 that “education and awareness training on domestic and sexual violence be made available to police officers, judges, doctors and the mass media to make their intervention more effective.”⁸⁵ In the past four years SOS Femmes en détresse has built up a partnership with several police stations in Algiers. They have found that, as a consequence of this cooperation, the police officers’ treatment of victims has improved considerably. Police officers in the respective police stations have reportedly ensured that women who presented themselves to the police station were made aware of their rights and where to find help in case of violence in the family. However, the organization is still awaiting permission from the authorities to conduct a wider project aimed at training security officers on issues related to violence against women.

⁸⁵ CEDAW, *Concluding Observations: Algeria*, *supra* note 18, para. 80.