

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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Courts Refusal to Hear Key Witness Violates Due Process

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(Beirut) The Algerian authorities long delays in bringing key terrorism cases to trial undermines the defendants right to a fair trial.

Human Rights Watch examined the cases of eight suspects who were held for up to six years in secret detention outside of the judicial system, and who now face trials of questionable fairness because the judges refuse to allow an important witness to testify. Most of the defendants are charged with involvement in the kidnapping of a group of 32 European tourists in the Algerian desert in 2003. These cases dramatize the continuing obstacles faced by those charged with terrorist offenses, even after authorities lifted a state of emergency in 2011, to obtaining justice that is both prompt and fair, Human Rights Watch said.

President Abdelaziz Bouteflika speaks often about judicial reform, but when it comes to trying suspected militants, reform does not yet mean fairness, said [Sarah Leah Whitson](#), Middle East and North Africa director of Human Rights Watch.

After lifting the state of emergency, [Algeria](#) has finally brought to trial men whom it had placed in secret detention for months or years. But the delays in their trials and the courts refusal to summon key witnesses suggest that the injustice against these men is continuing, Human Rights Watch said.

The justice system has divided the case of the 2003 kidnapping into several trials. Some have been stalled for more than a year over the courts refusal of defense motions to summon the alleged ringleader of the operation, who is in detention, to testify.

Human Rights Watch examined these cases with assistance from one of the key defense lawyers and by reviewing reports in the Algerian media. Algerian authorities have not approved requests made since 2010 by Human Rights Watch for visas to conduct an official mission to the country.

Responding to democracy protests in the region and in Algeria at the beginning of 2011, the government lifted the 19-year state of emergency and in April of that year, President Bouteflika pledged to reform laws and the judicial sector. On March 19, 2012, the president said that, Plans for reforming the judiciary, which figured among the national priorities, have progressed in structural, juridical and human terms.

However, Algerias handling of the alleged ringleader of the 2003 kidnapping operation, Amari Safi (known as El Para), illustrates the unjust treatment to which terrorism suspects can still be subjected. Algerian authorities took him into custody in 2004 and held him in an undisclosed location, without access to a lawyer, for more than six years, Amine Sidhoum told Human Rights Watch. Sidhoum is the lawyer who represented Safi after he was finally brought before a judge in 2011. Even though Safi was known to be in secret custody beginning in 2004, Algerian courts went ahead and tried him *in absentia*, sentencing him to death at one trial and to life in prison at another, violating his right to be present at his own trial.

Authorities finally brought Safi before an investigating judge in March 2011 and transferred him to Serkadji Prison in Algiers. But he still has not been brought to trial, even though Algerian law grants him the right to a new trial after his convictions *in absentia*. Judges also have refused to summon him as a witness in the trials of the men he allegedly led in the kidnapping operation.

The handling of Amari Safi suggests that the courts are unwilling or unable to respect the rights of defendants in major terrorism cases, Whitson said. The courts should respect due-process rights by summoning witnesses and trying defendants on the basis of a fair examination of all available evidence.

In another case in which the courts blatantly disregarded the rights of terrorism suspects to a prompt and fair trial, Malek Medjnoune and Abdelhakim Chenoui spent more than 11 years in pre-trial detention a violation of their right to a prompt trial and to the presumption of

innocence. In July 2011, they were convicted and sentenced in a one-day trial to 12 years in prison for complicity in the assassination of the celebrated poet-singer Matoub Lounes in June 1998, and membership in a terrorist group.

Both men said they were innocent and had been tortured during months of incommunicado detention before they were first brought to court in 2000 and charged. Medjnoune's father, in a complaint filed with the United Nations Human Rights Committee, stated that his son was held in incommunicado detention from September 28, 1999 until he was brought before an investigating judge on May 2, 2000. Human Rights Watch found no evidence that the court investigated the allegations about torture. Chenoui and Medjnoune were freed in March and May 2012, respectively, because their years in pre-trial detention were applied to their sentence.

Algeria needs to show that even those charged with heinous crimes have access to the judicial system, Whitson said. And suspects need to be presumed innocent until proven guilty if the verdicts of Algerian courts are to have legitimacy.

Secret Detentions Under the State of Emergency

On February 9, 1992, leaders of a military-backed coup issued a decree imposing a state of emergency shortly after halting legislative elections that an Islamist political party, the Islamic Salvation Front, was poised to win. The emergency decree gave authorities powers to restrict civil liberties and to detain people without charge.

In the months that followed, sporadic violence by Islamist armed groups became endemic, targeting both civilians and members of the security forces. The security forces engaged in fierce repression but also offered amnesty to militants who surrendered or renounced armed operations.

The violence continued throughout the 1990s, tapering off by the end of that decade. The number of people killed is not known but most estimates are between 100,000 and 200,000, most of them civilians.

Algeria continued to experience sporadic attacks by armed groups after 2000, including, in recent years, by groups claiming allegiance to Al-Qaida.

Violations of rights associated with the state of emergency included holding a group of terrorism suspects in secret custody for years, outside any form of judicial review or oversight. Since at least 2004, Algerian media have reported, citing official sources, the arrest or surrender of a number of people suspected of participating in the kidnapping in the Algerian Sahara of a group of 32 European tourists in February 2003, and in deadly attacks on military personnel at roughly the same period. Algeria said that the militant group behind this kidnapping was the Salafist Group for Preaching and Combat (*Groupe salafiste de predication et de combat*, GPSC). A commando operation freed 17 of the hostages in May 2003, and another 14 were freed in August 2003 after negotiations. One hostage died in captivity, apparently due to heatstroke.

After Algerian media reported arrests of the alleged kidnappers, some were placed in secret custody, removed from judicial review or oversight for months or years. Even though they were in custody, courts tried and convicted some of them *in absentia* and in other cases refused to summon them to testify at the trials of other defendants where their testimony seemed relevant.

Authorities called this practice of secret detention house arrest (*assignation residence*). The apparent basis for this practice is articles 5 and 6 of the 1992 emergency decree (presidential decree no. 92-44 of February 9, 1992 imposing the state of emergency). Article 5 provided:

The minister of interior and local government may decide to place in a security facility, in a specified place, any adult individual whose activity is determined to be dangerous for the public order, public security, or the proper operation of public services.

Under Article 5, the security facilities were to be set up by order of the interior minister and local officials. No list of such facilities, nor of the detainees placed in them, was ever made public, as far as Human Rights Watch could determine.

Article 6(4) of the emergency decree empowered the ministry of interior and local government and governors to assign to a residence any adult whose activity is determined to be harmful to the public order or to the functioning of public services.

Those placed in this form of detention did not, as far as Human Rights Watch has been able to determine, benefit from any regular form of judicial review of their continued detention, despite this fundamental requirement in international law, which applies even during genuine states of emergency. The UN Human Rights Committee in its General Comment on states of emergency, held:

The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the [International Covenant on Civil and Political Rights].

The detainees removed from the judicial system and placed in assigned residence during the state of emergency include Amari Safi, Hassan Hattab, Otmane Touati, Lounis Mokadem, Kamel Djermane, Fateh Bouderbala, Ali Ben Touati, and Khalouf Feres, whose cases were reviewed by Human Rights Watch. Authorities later charged most of them with complicity in the 2003 kidnappings, among other charges.

Algerian authorities stated throughout the decade beginning in 2000 that the continued risk of terrorism justified maintaining the state of emergency, but then lifted it on February 23, 2011, after weeks of rioting by youths and small pro-reform street demonstrations in the capital, and after uprisings erupted in neighboring Tunisia and Libya and elsewhere in the region.

President Bouteflika then pledged both legal and structural reforms, including in the judiciary. In his annual oration at the opening of the judicial year on December 21, the president spoke, according to [El-Moudjahid](#), of reforms of the judicial sector [that would] restore the confidence of the citizen in general and those before the justice system in particular, in their judicial system. This goal, he said, depends on the behavior of judges, on their impartiality and their performing well through timely and objective verdicts in conformity with the law. They are to apply the law in complete loyalty to it and independence.

Impact of Lifting Emergency Laws on Secret Custody Detainees

The lifting of the emergency law had immediate consequences for detainees who had been held in secret custody outside of the prison system, some for years. They were brought before a judge, who sent some to pretrial detention in an Algiers prison and others to a new form of custody created by a presidential decree on the day the state of emergency ended.

The presidential decree amended article 125*bis*(1) of the code of criminal procedure by allowing judges to assign suspects who have been charged to a protected residence (*rsidence protge*). The decree does not specify the types of locations where the state can confine a person in protected residence and also imposes secrecy around it, stating that, Anyone who reveals any information related to the location of the protected residence risks the punishment provided [by the law] for revealing confidential aspects of a judicial investigation (*la divulgation du secret de linstruction*). The decree limits the period of protected residence detention to three months, renewable twice for additional three-month periods.

The term protected residence suggests that this could be a kind of house arrest, in the affected persons home. However, authorities used a similar term (*assignation residence*) during the state of emergency to confine people in military barracks and other unacknowledged detention sites secretly. This raises concerns that the new protected residence provision will still allow the government to hold people in unacknowledged detention sites.

The International Convention for the Protection of All Persons from Enforced Disappearances in Article 17(1), No one shall be held in secret detention. Algeria has not ratified this convention but has signed it, implying an engagement not to develop laws and practices that contravene it.

Human Rights Watch has been unable to determine the total number of suspects who were transferred out of secret custody upon the lifting of the state of emergency. It is only aware of a few of such cases, presented below.

Placing these detainees under judicial oversight, either in prison or protected residence, is an improvement over their previous state in secret custody, removed from the judicial system, Human Rights Watch said. However, the trials of many of those suspected of involvement in the 2003 kidnapping have been held up for more than a year because the courts refuse to summon Safi to testify, as their defense lawyers have requested.

The International Covenant on Civil and Political Rights, which Algeria has ratified, states in article 14(e) that the guarantee of a fair trial requires that a defendant be able to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. Article 14(c) guarantees the right to be tried without undue delay. This provision applies especially to people in custody: if they are not given a trial within a reasonable period, they should be released.

The following people, whose cases have been reviewed by Human Rights Watch, were held outside of the judicial system for up to six years:

Amari Safi (El Para)

Safi is one of the best-known suspects held outside the judicial system for years. The Algerian press commonly refer to both Safi and Hassan Hattab (see below) as emirs of the militant Salafist Group for Preaching and Combat (*Groupe salafiste pour la prdication et le combat*, GSPC). Algerian newspapers [reported](#) in 2009 that both men, after they had been held in secret custody for years, had issued appeals to militants to lay down their arms.

Authorities accuse Safi, reportedly a former paratrooper in the Algerian army thus the nickname El Para of being a leader of the group, masterminding the 2003 kidnapping operation, and killing members of Algerias security forces the same year. Numerous press reports said that Chadian rebels captured Safi and turned him over to Libyan authorities. Libyan authorities sent him to Algeria in October 2004, Algerian [press reports](#) at the time said, citing a statement by Algerias Interior Ministry.

The GSPC professed allegiance to Al-Qaida in 2007 and renamed itself Al-Qaida in the Islamic Maghreb (AQIM). The UN Al-Qaida Sanctions Committee [lists](#) Safi as a member of that group.

Between Safis reported arrival in Algerian custody in October 2004 and his appearance before a prosecutor in Algiers on March 7, 2011, he remained in custody in an undisclosed location, prevented from attending his own trial and those of co-defendants who sought his appearance in court to testify at their trials.

Amnesty International [cited](#) press reports that authorities presented Safi to a prosecutor in January 2005. However, he was absent from an April 24, 2005 hearing of a trial before the Algiers criminal court in which he was among the accused. The court convicted him *in absentia* on June 25, 2005, along with other defendants, of forming a terrorist group that aimed to sow terror among the population, and sentenced him to life in prison, *L'Expression* [reported](#) at the time. Safi was also absent from a trial against him in Biskra that was postponed indefinitely on March 24, 2008, *El-Watan* [reported](#).

The general prosecutor at the Algiers Court, Zaghmati Belkacem, declared on November 3, 2009, that Safi was not in any prison within his jurisdiction that is, in Algiers, *L'Expression* [reported](#).

On June 21, 2010, the criminal court in the city of Batna sentenced Safi to death *in absentia* for terrorist activities, according to *EL-Watan*.

On March 7, 2011, two weeks after the state of emergency was lifted, authorities brought Safi before a special terrorism prosecutor (*procureur des Ples Spcialiss charg des affaires de terrorisme*) at the Algiers criminal court. The court charged him with harming the security of the state in order to topple or change the nature of the government; inciting citizens to take up arms against the state; harming national unity; leading armed groups to subvert national security; rape; theft; attacking public agents; forming a terrorist group to sow terror among the population and to create a climate of insecurity; possession of forbidden weapons and munitions; selling, importing and exporting arms without authorization; premeditated murder; and kidnapping for the purpose of demanding a ransom. These are offenses

under the penal code, articles 77, 84, 86bis(7), 87bis, 87bis(3), 87bis (1), 245, 255, 256, 257, 261, 291, and 293bis.

Authorities then remanded Safi to Serkadji prison in Algiers. [Media reports](#) quoted Justice Minister Tayeb Belaz in March 2011 saying that Safi was in pre-trial detention and that his case is now in the hands of the courts.

However, the courts handling of the 2003 kidnapping cases in the year that followed demonstrated a disregard for the right of defendants to due process and to a prompt trial, Human Rights Watch found. Safi has remained in Serkadji prison. The courts have yet to put him on trial and have rejected defense requests to bring him to court to testify at the trials of defendants charged for their role in terrorist activities that Safi allegedly led.

For example, Omar Ferrah and Yacine Assani are on trial for membership in an armed terrorist group, murder, involvement in the kidnapping of foreign tourists in 2003, and other serious crimes. They are not among those who were placed in secret house arrest during the state of emergency. However, their trial has been delayed repeatedly by protests by the defense team over the courts refusal to summon Safi to testify. At the March 17, 2011, session of their trial, for example, the judge told the lawyers that Safis presence was not necessary. *El-Watan* [reported](#):

Attorney Hadria Khannouf asked for the trials postponement. Your honor, today we know that El Para [Safi] is in the custody of the Justice Ministry. The minister himself confirmed it. For this trial to proceed properly, we ask that he be present. The judge replied that the trial has already been postponed several times and that the court has decided to get on with the trial, after determining that the presence of El Para is unnecessary, considering that he is not among the accused.

This remark prompted attorney Amine Sidhoum to respond, But, Your Honor, El Para is named in the court report, a copy of which is before you. Among the accused parties, his name is listed third. And I, as the lawyer for [Assani], demand his presence considering that he is in detention according to the minister of justice.

Attorney Sadia Touati made the same request. She had petitioned last January the general prosecutor to require the attendance of El Para. According to the court report, my client belongs to the group of El Para, but the latter denies and rejects the charges. He should be heard in order to clarify this point, she said.

The three lawyers asked what was behind the refusal to present this ex-Amir. He is not a witness but rather the principal accused party and the commander of the kidnapping of the foreign tourists. They ask, why are they trying to keep him away from the case?

Sidhoum confirmed to Human Rights Watch that the judge had called Safi a special case to justify his refusal to summon him to court.

To protest the courts refusal to summon Safi, lawyers Sidhoum and Khannouf withdrew from the case at the March 17 session, prompting the judge to assign new lawyers to represent Ferrah and Assani. At the subsequent sessions of the trial, on April 14 and again on June 22, Safi still did not appear. The judge adjourned the case until the next court session, starting in October 2011. The adjournments continued throughout the autumn court calendar, as the defense lawyers maintained their boycott of the case to protest the judges refusal to summon Safi for questioning. By February 1, 2012, the trial had been postponed 11 times. On April 11, 2012, with the situation unchanged, the judge postponed the case until the autumn 2012 court session. Meanwhile, Assani has petitioned the Court of Cassation to quash the indictment prepared by the Accusation Chamber.

Hassan Hattab

Hattab was, until his surrender, widely recognized as the emir of the Salafist Group for Preaching and Combat. Interior Minister Yazid Zerhouni told news media that Hattab surrendered to authorities on September 22, 2007. An Algerian newspaper said he had turned himself in to take advantage of an amnesty. However, Zerhouni was [quoted](#) as saying, As [Hattab] is involved in several judicial cases, he has to clarify his situation.

Like Safi, Hattab was convicted *in absentia* during the state of emergency for terrorist offenses even though he was in custody at the time of his trial. On November 25, 2007, a criminal court in Tizi-Ouzou sentenced him and a co-defendant to death *in absentia* for membership in a terrorist organization and the attempted assassination of an army general in 1993, *El-Watan* [reported](#). On March 17, 2007 before Hattabs surrender a criminal court in Batna had sentenced him to death *in absentia* on terrorism-related charges.

The day after lifting the state of emergency on February 23, 2011, authorities brought Hattab before a court. He is charged with forming a terrorist group, participating in attacks using explosives, premeditated murder, attempted murder with premeditation, and possession of weapons of war without authorization, among other charges.

Instead of placing Hattab in pretrial detention, as they had done with Safi, authorities said they had placed Hattab in protected residence. Justice Minister Belaz stated on March 13, 2011, that the investigating judge could visit and question Hattab in his protected residence, but that the family of the accused and his lawyer must not reveal the location [of his protected residence], for reasons of security. [Media reports](#) at the time said that Belaz intimated that authorities were placing Hattab in protected residence rather than in pretrial detention because he could be useful to the security forces in their fight against terrorism.

In December 2011, the general prosecutor of the Algiers Court, Belkacem Zeghmati, [told the press](#) that an investigating judge had transferred Hattab from protected residence to judicial supervision, without disclosing his whereabouts. He remains under judicial supervision as of this writing.

Since being taken into custody nearly five years ago, Hattab has not appeared in court in any trials where he was a defendant or in trials where defendants sought his testimony as a witness.

Kamel Djermane

Algerian authorities suspect Djermane of being a top aide to Safi. The UN Security Councils [Al-Qaida Sanctions List](#) names Djermane as a member of Al-Qaida in the Islamic Maghreb.

Libya sent Djermane to Algeria on July 14, 2007, according to his court file, as cited by the Algerian press. Sidhoum, Djermanes lawyer, told Human Rights Watch that his case file shows that authorities placed him in *garde vue* (pre-arraignment) detention from September 10 until September 23, 2007. During that time, Djermane was allowed no contact with his family or lawyer, Sidhoum said. The file also indicates also that the judicial police questioned him on October 28 of that year, Sidhoum told Human Rights Watch. Authorities charged Djermane in connection with the kidnapping of the foreign tourists in 2003, but kept him in assigned residence until the end of the state of emergency, when they transferred him into pretrial detention.

Djermanes trial before the Algiers Criminal Court has been postponed repeatedly, as Djermanes lawyers, including Sidhoum, protested the courts refusal to summon Safi as a witness for the defense. On April 15, 2011, for example, the defense lawyers refused to argue the case in the absence of Safi, maintaining that he appears in the report of the Chamber of Accusation (*l'arrt de renvoi*) as a co-accused. The judge adjourned the hearing, to allow for clarification of Safis status in this case, the Algerian daily *Libert* [reported](#). On June 9, 2011, with the defense still protesting Safis failure to appear, the judge in the case adjourned the case until courts autumn season, *Le Soir d'Algerie* [reported](#). The situation remained unchanged throughout the autumn 2011 and spring 2012 court sessions. On April 3, 2012, the court postponed the case again due to the absence of the defense team, who had walked out of the trial to protest the courts refusal to summon Safi. The trial is scheduled to resume July 7.

Amar Gherbia

Gherbia is on trial for his alleged role in the 2003 kidnapping of foreign tourists. His trial opened before an Algiers court in November 2011. At that time, Sidhoum, also Gherbias lawyer, asked the court to subpoena Safi to testify as a witness. The trial was postponed until January 2012, when the court maintained its refusal to subpoena Safi, causing Sidhoum to [withdraw from the case in protest](#). The trial has not resumed as of this writing.

The following three prisoners have not been charged with involvement in the 2003 kidnapping of Europeans but all were held in secret assigned residence during the state of emergency.

Lounis Mokadem

Authorities arrested Mokadem on April 18, 2010, and placed him in assigned residence, according to a written order dated May 10, 2010, from the Interior Ministry. The Algerian media also later [reported](#) Mokadems arrest on that date, describing him as a former medical chief for Al-Qaida in the Islamic Maghreb.

Human Rights Watch viewed a general report in Mokadems court files that is signed by the president of the judiciary police service in Algiers and that refers to the May 10, 2010 detention order.

Sidhoum, also Mokadems defense lawyer, said that from the time of Mokadems placement in assigned residence in April or May 2010 until February 24, 2011, the day after the state of emergency ended, authorities did not bring him before a judge or allow him access to a lawyer.

On May 15, 2011, the Accusation Chamber of the court in the wilaya (province) of Boumerdes examined charges against Mokadem that included membership in a terrorist organization operating inside the country. In November 2011 the court convicted him and sentenced him to 10 years in prison.

Othmane Touati

Authorities describe Touati as a top aide to Al-Qaida in the Islamic Maghreb emir Abdelmalek Droukdel and as a judge within the organization. Touati surrendered to authorities on May 25, 2010, news media [reported](#). He remained in assigned residence until he was brought before an investigating judge on February 27, 2011, Sidhoum said. Touati remains in pretrial detention, facing charges of belonging to a terrorist organization and possessing weapons without authorization.

Khalouf Feres

Feres was held in assigned residence for a period following his arrest, denied access to a lawyer and his family, Sidhoum said, and then charged in 2008. In May 2011, after the end of the state of emergency, an Algiers court convicted him of membership in a terrorist organization and possession of explosives, and sentenced him to five years in prison. Feres was then sent to Bouira Prison.

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