ATTACKS ON JUSTICE - PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA

Highlights

The judiciary continues to face interferences from the executive but for the first time judges have dared to challenge and resist them while publicly denouncing them. Judges do not have effective internal independence and corruption remains endemic among the judiciary. A draft code of conduct for judges is currently under discussion. In September 2004, in what was a major step towards restoring the independence of the judiciary, two organic laws relating to the status of judges and the Higher Judicial Council were passed, with the Higher Judicial Council regaining its original constitutional powers. In November 2004, the Penal Code and the Code of Criminal Procedure, both dating from 1966, were amended with a view to incorporating international human rights standards. Judicial infrastructure is largely inadequate and the backlog of cases remains a matter of concern. The legal profession is independent but lawyers are sometimes identified with their clients' causes and subjected to intimidation for defending sensitive cases. Prosecutors, who form part of the judiciary, experience interference, pressure and unwarranted requests from the executive. Access to justice for people of limited means remains difficult although the state provides legal assistance.

BACKGROUND

The presidential elections held in April 2004 saw incumbent President Abdelaziz Bouteflika re-elected for a five-year term with over 80 per cent of the votes. There was tension around the election, largely due to a struggle for control within the ruling party, *Front de Liberation Nationale* (FLN), and pressures exerted on the press. The party was divided between a faction backing President Bouteflika and a group supporting former Prime Minister Ali Benflis who had been dismissed in May 2003 (see, http://www.afrol.com/articles/11168). There were claims of fraud but international observers found no irregularities and assessed the elections to be transparent and fair.

The decade-long conflict in the country has diminished in intensity but not completely subsided (see, http://www.economist.com/research/articlesbysubject/printerfriendly.cfm?story_ID=1224647 &subjectID=548018). The "Civil Harmony" *(Concorde Civile)* law introduced in 1999 to grant amnesty or leniency to Islamist rebels who renounced violence did not result in a complete disbanding of armed groups. The Armed Islamic Group *(Groupe Islamique Armé)* and the Salafist Group for Preaching and Combat *(Groupe Salafiste pour le Prêche et le Combat)* have continued their violent struggle. Civilians have been killed in armed attacks, and human rights defenders continue to be harassed and intimidated.

In accordance with *UN Security Council Resolution 1373 (2001)*, a domestic mechanism was set up in April 2002 to put a stop to the financing of terrorist organizations and money laundering. *Executive Decree N° 02-127* of 7 April 2002 established the Financial Information Processing Unit *(Cellule de traitement du renseignement financier)*. A new law on money laundering setting out the unit's powers was passed by the lower chamber of Parliament in December 2004.

In France, two Algerian torturers were indicted on 30 March 2004**.** Abdelkader and his brother Hocine 'Adda' Mohamed, both members of the Algerian Relizane Militias, were released on probation on condition that they remained on French territory. The indictment relates to a complaint for torture and crimes against humanity filed by several non-governmental organizations in October 2003 before the Nîmes Court of First Instance (see www.fidh.org/article.php3?id_article=824). In June 2003, the French *Cour de Cassation* confirmed a decision by a lower court to reject an application from a non-governmental organization for General Aussaresses to be tried for crimes against humanity committed during the Algerian War.

On 20 September 2003, at the recommendation of the National Consultative Commission for the Promotion and Protection of Human Rights *(Commission nationale consultative de promotion et de protection des droits de l'homme, CNCPPDH)*, President Abdelaziz Bouteflika established an ad hoc mechanism to liaise between the Algerian authorities and families of those who had disappeared (see http://web.amnesty.org/library/index/engmde280142003; http://web.amnesty.org/library/Index/ENGMDE280102003?open&of=ENG-DZA). The commission does not have any real investigative powers as it was established by means of a Presidential decree and not legislation. Its powers are limited and it cannot bring those who are allegedly responsible to trial. Nevertheless, it sends out a positive message that the President recognizes the State's duty to solve the problem. There are still reports that evidence relating to disappearances and human rights abuses has been concealed or destroyed: in January 2004, mass graves were reportedly secretly exhumed in the western province of Relizane and, in July 2004, another mass grave was discovered (See http://web.amnesty.org/library/Index/ENGMDE280102004?open&of=ENG-DZA).

The Constitution was amended in 2002 pursuant to *Law N° 03-02*. On 22 April 2002 in Valencia (Spain), Algeria signed the Euro-Mediterranean Agreement with the European Union which contains human rights safeguards. Algeria is a party to the African Charter on Human and Peoples' Rights and its additional Protocol which established the African Court of Human and Peoples' Rights.

JUDICIARY

Judicial reforms

De facto control of the administration of justice lies with the President and the Ministry of Justice. Since 1998, a number of draft laws have sought to change this and finally, in September 2004, after several attempted amendments during the previous legislature and two reviews by the Constitutional Council, two organic laws relating to the status of the judiciary and the Higher Judicial Council respectively were passed

(Law No. 04-11 of 6 September 2004 on the status of the judiciary, *Loi organique portant statut de la magistrature,* and Law No. 04-12 of 6 September 2004 concerning the Higher Judicial Council, *Loi organique fixant la composition, le fonctionnement et les attributions du Conseil Supérieur de la Magistrature;* see http://www.joradp.dz/JO2000/2004/057/F_Pag.htm and also The Higher Judicial Council below).

At the same time, the President of the Republic significantly reshuffled the judiciary. The publication of legislation and judicial transparency are being improved by means of a project to electronically link all jurisdictions and facilitate access to their case law.

The Higher Judicial Council

The *1989 Law on the Status of the Judiciary* was amended in 1992 following the institution of a state of emergency. The amendments reinforced the executive's influence by changing the composition of the Council in its favour, transforming it into a merely consultative body with no binding authority.

Since 1992, the Council has had no effective decision-making power in practice. In protest to this state of affairs and the legal challenges encountered by the new draft law on the status of the judiciary that seeks to reinstate the Council's constitutional powers, the last elections for judges' representatives were boycotted following a call by their national association. The composition of the Council was therefore, though legal, neither representative nor legitimate.

The entry into force in September 2004 of *Law N° 04-12* after it was declared constitutional by the Constitutional Council was therefore a major positive step for the judiciary. The role of the judiciary is now regulated by *Law N° 04-11 of 6 September 2004 on the status of the judiciary* (*Loi organique portant statut de la magistrature)* and *Law N° 04-12 of 6 September 2004 on the Higher Judicial Council* (*Loi organique fixant la composition, le fonctionnement et les attributions du Conseil Supérieur de la Magistrature)*. Under these laws, the Higher Judicial Council is responsible for supervising the careers of judges (though not other judicial officers). *Law N° 04-12* has restored the original constitutional powers to the Higher Judicial Council so that it is once again responsible for the judiciary and for handling complaints concerning its conduct and operation, with a view to ensuring its independence.

The Council's functions are set out in article 155 of the Constitution (http://www.oefre.unibe.ch/law/icl/ag__indx.html) while its composition and powers are laid down in *Law N° 04-11* of 6 September 2004 on the status of the judiciary. The Council is presided over by the President of the Republic and comprises the Minister of Justice as Vice-President, the first President of the Supreme Court, the Attorney General to the Supreme Court and ten judges elected by their peers, as well as six public figures from outside the judiciary chosen by the President of the Republic. In contrast to the previous law, Council members serve a non-renewable four-year term. While in office, elected members cannot be transferred, promoted or disciplined - in the past some members could be promoted while serving on the Council. The Inspection Unit of the Higher Judicial Council carries out investigations

and prepares cases for disciplinary actions.

Legal reforms

Judges, lawyers, university professors and other jurists are being increasingly drawn into the drafting process and specialized committees covering different areas of law that have been set up. Recently, the National Judges' Association (*Syndicat National des Magistrats*), the Bar Association and other professional associations have been involved in drafting legislation relating to the judicial sector, including the law on organization of the judiciary. Despite differences of opinion between them and the Ministry of Justice, their involvement in these bodies has had positive results.

Code of conduct

There is no official code of conduct for judges. However, within the framework of the ongoing legal reforms, in 2003 the Ministry of Justice set up a Commission consisting of judges and representatives of the National Judges' Association to draft a code of ethics for judges. A draft is currently under discussion.

The Penal Code and the Code of Criminal Procedure

The *Penal Code* and the *Code of Criminal Procedure*, both dating from 1966, have been amended on several occasions, the last time being on 10 November 2004 (*Laws No. 04-14 and No. 04-15* -- JORADP N° 71, 2004) with a view to incorporating international human rights standards.

In order to incorporate the *International Convention Against Transnational Crime* and its two additional protocols, which Algeria has ratified, and to comply with its provisions, the rights of defence counsel have been strengthened in the codes, sexual harassment has been made a punishable offence, and a definition of torture, albeit not consistent with international standards, has been provided. A number of other concepts have also been introduced, including the non-applicability of statutes of limitations in the case of serious offences and the submission of corporate bodies to criminal liability.

Military courts

The *Code of Military Justice* existed prior to the 1989 Constitution and needs to be brought into line with it. Work on a revised version began in 1998 but, as of December 2004, had not come into force.

The procedural guarantees contained in the Code of Military Justice are broadly similar to the procedures that apply to the ordinary courts. However, there are a number of differences: police detention can last up to 72 hours in military cases, as opposed to 48 hours normally, and is devoid of guarantees. Moreover, a military court sitting as an indictment chamber (*chambre d'accusation*) supervises the actions of the examining magistrate. It thus combines two incompatible functions, that of investigation and that of judgment. Also, in strictly military cases, the defendant must receive authorization from the presiding judge before choosing a lawyer. In August 2000, the Commission on the Reform of Justice presented its report to the President of

the Republic, calling for the jurisdiction of military courts to be limited and for the *Code of Military Justice* to be amended to bring it into line with the *Code of Criminal Procedure*. Reportedly, as of December 2004, its recommendations have yet to be implemented.

Military courts can exercise jurisdiction over civilians. However, the last occasions on which civilians were tried in military courts were in 1991 and 1994. In recent cases, some alleged terrorists were brought before military courts but the latter declined jurisdiction in favour of the ordinary courts.

Independence of the judiciary

The independence of the judiciary is enshrined in article 138 of the 1996 Constitution. Articles 147 and 148 state that judges are subject only to the law and are protected from all forms of pressure. Although article 145 of the Constitution stipulates that state organs must take steps to enforce judicial decisions, this is not always the case, particularly with regard to decisions that go against the administration.

Although in theory judges have unfettered freedom to decide cases impartially, in practice they are not completely independent and are subject to pressure. Judges are not always trained to resist corruption and other forms of enticement, and influential figures sometimes resort to executive interference. The most significant and urgent problem for judges remains their precarious status, together with the pressures exerted on them - especially in cases with political overtones or involving influential individuals. Disciplinary action has been taken against judges who publicly denounced such interference (see Cases below).

The judiciary was not subject to the great pressure it currently experiences in the past but, for the first time, judges have dared to challenge and resist interference with their decision-making while simultaneously denouncing this political influence publicly via the press, in particular, in the FLN case (see Cases below).

During this period, the judiciary has courageously handed down decisions contrary to the interests of those seeking to influence the judgements and thereby attempted to curb the powers of certain political groups and individuals. However, they were largely overturned by higher courts as a result of heavy pressure or enticement. One example was when the Council of State overruled its own earlier decision and invalidated the 8th Congress of the FLN.

Judges can disqualify themselves from participating in proceedings in which they feel unable to decide matters before them impartially. Parties to a case can also ask for them to be disqualified. The procedures and grounds for disqualification are set out in article 554 of the *Code of Criminal Procedure*. Judges do not usually cite international or regional instruments or use them to overrule incompatible domestic legislation.

Lower courts are legally bound by the decisions of higher courts. In practice, however, this is reportedly not always respected. Higher courts themselves do not systematically comply with their own decisions, with the result that contradictory rulings are sometimes made.

The Constitutional Council

The Constitutional Council, which was established in the 1989 Constitution, examines the constitutionality of treaties, laws and regulations and has the power to invalidate unconstitutional acts. Although independent in theory, the way it operates limits its independence and there have been claims that the President may influence it.

The Constitutional Council was criticized by the press and presidential electoral candidates when it rejected Taleb El-Ibrahimi's candidacy for the 2004 presidential elections.

In November 2002, it also declared the new law governing the status of the judiciary to be unconstitutional. The grounds given were considered to be largely unconvincing. The government had reportedly blocked the law's introduction for four years before entrusting the mixed Parliamentary commission with the task of reconciling the divergent views of the two houses. The law was eventually voted on in 2002 but the President of the Republic submitted it to the Constitutional Council which complied with the government's view. The President had invoked article 119 of the Constitution which states that the government must submit draft legislation to the Council of State before it is examined by the Council of Ministers. The draft law on the status of the judiciary had been initiated and presented to Parliament before the installation of the Council of State.

The Constitutional Council was again called upon in August 2004 to examine the legality of the laws on the status of the judiciary and the Higher Judicial Council. It declared them constitutional on 22 August 2004 and they were passed in early September 2004.

Internal independence

Judges do not enjoy effective internal independence from their judicial colleagues and superiors, and illegal pressures are often exerted on them by the heads of the jurisdiction acting of their own accord or on orders from the Ministry of Justice, i.e. the executive. Ministers in general regularly give orders or instructions to judges. Court administration is the responsibility of the heads of jurisdiction who are appointed by the President of the Republic at the recommendation of the Minister of Justice. Heads of jurisdiction have important powers: they allocate cases, appoint judges to particular chambers and units, and assign staff and budgets. They are in charge of the administrative files of the judges within their jurisdiction and can therefore use those files to put pressure on them. Such powers are reportedly often exercised without transparency, and are therefore an effective way of exerting internal pressure on judges.

The National Judges' Association, the Commission on Reform of Justice and the media have all reportedly condemned this illegal practice on several occasions.

Security of tenure

After completing their initial training, judges are appointed as trainee judges. They must undergo probation for one year before final employment can be confirmed by the Higher Judicial Council. Article 26 of the new *2004 Law on the Status of the Judiciary* (*Law No. 04-11*; http://www.joradp.dz/JO2000/2004/057/F_Pag.htm) states that, once a judge has been in office for ten years, he or she cannot be removed from office or transferred without their consent.

Judges receive a monthly wage that is determined by article 17 of *Law No. 04-11* which states that the wage they receive must be sufficient to enable them to preserve their independence and appropriate to their duties and responsibilities. Judges' pay had for a long time been inadequate. However, their financial position and working conditions have clearly improved over the past two years. Wages were slightly increased in October 2002 as a result of *Presidential Decree No. 02-325* of 16 October 2002 and judges are now among the highest paid civil servants. Other perks, such as bonuses, interest-free loans to finance car or house purchases and work accommodation, are also provided. In 2002, the Ministry of Justice's budget was also slightly increased and a Department for the General Management of Modernization of the Justice System was created to improve judges' working conditions.

As for retirement and pension, the new 2004 law on the status of the judiciary makes them subject to the same scheme as senior civil servants. Retirement age is 60 although it can be extended upon request to 68 for Supreme Court Judges and 65 for others, or lowered to 55 for women. Over 33 per cent of all judges are currently women and their numbers are increasing. Over the past few years, women have even outnumbered men in law schools. All qualifying judges are entitled to a pension, even those who have been subjected to disciplinary action.

Although there have been some improvements, the precarious status of judges remains a problem today.

Disciplinary proceedings

There is no official code of conduct for judges. Disciplinary proceedings can be brought whenever a judge fails to discharge his professional duties. Complaints against magistrates are investigated by the Ministry of Justice's Inspection Unit whose members are appointed by the Minister of Justice from among judges who are at least appellate judges. The investigation and ensuing proceedings cannot be said to be independent as the Minister of Justice (the executive) directs them and makes the final decision on whether or not they should go ahead.

According to article 66 of *Law No. 04-11* of 6 September 2004 (http://www.joradp.dz/JO2000/2004/057/F_Pag.htm), unless a lawsuit has been opened against him, any judge who has been suspended must be brought before the Higher Judicial Council within six months, failing which he should be fully reinstated. Decisions by the Higher Judicial Council can be appealed to the Council of State.

The possible disciplinary penalties are set out in the 2004 law on the status of the judiciary and range from a mere reprimand to removal. The Higher Judicial Council, when exercising its disciplinary functions, is presided over by the first president of the Supreme Court. In theory it has the final decision, but its independence and impartiality are not systematically assured. In some instances, judges have reportedly been disciplined without being granted fair trial guarantees.

Disciplinary penalties can be appealed, in the event of dismissal, to the Higher Judicial Council or, in the event of abuse of power, to the Council of State which has overturned two decisions in the past. The Higher Judicial Council then holds a formal meeting and its decisions in relation to disciplinary proceedings are made public. There is no mechanism to protect judges against malicious complaints.

Lack of resources

Judicial infrastructure, i.e. financial, human and technical resources, is largely insufficient. The budget for the judiciary is proposed by the Ministry of Justice and distributed by the executive who decides how it should be allocated. Although the heads of jurisdiction are consulted, the executive has the final say on the management of the budget. Distribution of funds is not always based on objective criteria, but it has reportedly not been used as a way to punish or reward courts for the behaviour of particular judges.

Judges have not always been able to perform their duties diligently and efficiently because of a number of factors. These include the inappropriate distribution of cases by the court administration that fails to take account of the complexity of judicial proceedings, the backlog of cases facing courts, undue delays, the inadequate allocation of judges, lack of resources and qualified personnel, lack of motivation, corruption and incompetence. The situation has improved in recent years, and the authorities have taken steps to overcome the lack of resources by recently increasing the judicial budget and introducing new initiatives with regard to the recruitment and training of judges. So far, there have been no reports of judges being appointed on inappropriate grounds. Continuing education and specialist training were introduced in 2000 and are still provided by the National Judges' Institute.

The National Judges' Association (Syndicat National des Magistrats)

Although judges are free to form and join professional associations to protect their independence, the National Judges' Association has been subjected to pressure and manipulation by the central administration ever since its creation in 1990. Several of its members have been subjected to disciplinary proceedings, the last instance being when the Association's President was dismissed in December 2003 (see Cases below).

Judicial corruption

Article 126 of the *Penal Code* makes corruption a punishable offence, and being a judge is an aggravating factor entailing between five and 20 years' imprisonment. Reportedly, although a number of corrupt judges have been prosecuted, convicted and dismissed in recent years, corruption still remains endemic in the judiciary. The

methods used to combat it are inadequate to ensure an effective remedy. There is no supervisory mechanism to ensure judges' impartiality. There is reportedly a widespread public perception that corruption in the judiciary is endemic.

Cases

Interference from the executive

Pressure on judges was widely reported in the press between **September 2003** and **April 2004** in the context of a lawsuit brought against the private press, and the conflict that took place between the two branches of the ***Front de Libération Nationale*** *(FLN)*, National Liberation Front, prior to the April 2004 presidential elections. In this last instance, administrative justice was reportedly manipulated: the Council of State had to go back on its own decision to invalidate the FLN's 8th Congress while freezing its funds (See http://www.conseil-etat-dz.org/, ruling of January 2004).

Judges who dared to publicly denounce such interference were punished. As a result, **Ras El Ain, President of the National Judges' Association,** was transferred away from Algiers before being suspended and finally dismissed in **December 2003**. He was removed from his post because of his opposition to the instrumentalisation of justice.
Following the decision by the Council of State to invalidate the FLN Congress, he reportedly denounced the lack of independence in the judiciary and deplored the absence of any real political will to install an independent judiciary. Ras El Aïn was dismissed *in absentia* without being given the opportunity to answer to the charges against him. He was also suspended from his position as President of the Algiers Court, thereby violating the principle of security of tenure established under article 26 of *Law N° 04-11* which prohibits a senior judge from being transferred without his consent. Ras El Aïn had also protested against the dismissal of **Mohamed Zitouni**, a former President of the Algiers Court, in **November 2003** and that of three examining magistrates from the Constantine Court, as well as the suspension of **Deputy General Prosecutor Rafik Menasria,** who was eventually dismissed in **June 2004.** (See, http://www.africatime.com/algerie/nouvelle.asp?no_nouvelle=110057&no_categorie=UNE)

A former President of the Council of State, **Ahmed Bellil,** and another judge from the Council were also suspended and, according to the media, were facing criminal proceedings in **late 2003**. On **15 September 2004**, Mrs Aberkane, President of the Council of State, was dismissed.

Judicial corruption

Over the past few years, a number of corrupt judges have reportedly been prosecuted, convicted and dismissed in Algiers, Blida, Constantine and Sétif, among others.

LEGAL PROFESSION

Independence

The legal profession is effectively independent. As a general rule, lawyers are able to perform their professional functions free from intimidation, threat or interference. Instances of intimidation remain the exception, with the most flagrant ones dating back to the days of the now-abolished Special Courts. Defence rights are enshrined in the Constitution and guaranteed by law. *Law N° 91/04* of 8 January 1991, which was adopted in a context of democratic opening when the then Minister of Justice was a former President of the Bar *(Bâtonnier)*, regulates the legal profession and affirms its independence (http://www.joradp.dz/JO8499/1991/002/F_Pag.htm). Unlike the status of judges, that of lawyers has not been affected by the longstanding state of emergency.

Article 2 of *Law N° 91/04* guarantees legal representation, defence and assistance to the parties in a case. Lawyers are permitted to consult freely with their clients and to discharge their duty of representing their clients before the courts. Article 91 of *Law No. 91/04* protects lawyers in the exercise of their professional duties. There is, on the whole, no deliberate attempt to prevent lawyers from carrying out their duties. No cases of criminal proceedings against lawyers for actions or statements related to the discharge of their duties were reported during the period. However, lawyers are sometimes identified with their clients' cause, and a number of lawyers were subjected to intimidation or pressure during the period for having defended sensitive political cases (see Cases below).

There is reportedly growing discrimination with respect to entry into the legal profession. Corporatism, elitism and nepotism are gradually causing middle-class candidates to be excluded. This is due to the hurdles they have to face, such as the cost of registration and training fees and the requirement to have premises and find a traineeship in a reputable law firm. An increasing number of women are joining the profession: in 2003**,** they comprised 35 per cent of the total.

Bill to amend the law on organization of the legal profession

The *2003 Bill to amend the law on organization of the legal profession*, introduced by the Ministry of Justice, would allow the Public Prosecutor to intervene in disciplinary actions. Such proposals are, however, far-reaching and disproportionate. Rather than serving to reinforce legitimate discipline, they could be counterproductive and jeopardize the independence of the Bar and of lawyers in general.

Disciplinary proceedings

There are no guidelines or codes of professional conduct for lawyers. Hence the grounds for taking disciplinary action are not defined in law. Penalties range from a warning to censure, suspension and disbarment. The procedure to be followed in the event of disciplinary proceedings is set out in the law on organization of the legal profession (*Law No. 91-04*, http://www.joradp.dz/JO8499/1991/002/F_Pag.htm). The Council of the Bar elects members of the Disciplinary Council. The procedure followed in disciplinary proceedings ensures respect for fair trial guarantees.

Decisions of the Disciplinary Council can be appealed to the National Appeal Commission *(Commission Nationale de Recours)*. In practice the Disciplinary Council has rarely disciplined lawyers. The few cases submitted to the Council concerned serious violations that were incompatible with the exercise of the legal profession.

The Bar Association

Lawyers are organized in Bar Associations, which are grouped together in a National Union of Bar Associations *(Union Nationale des Barreaux)*. The right to create organizations, associations and collective law firms is guaranteed in the law on organization of the legal profession (*Law N° 91-04*). In practice, those rights are not hampered. The only infringements denounced by the Council of the Bar or the National Union of Bar Associations relate mainly to individual behaviour on the part of judges or prosecutors. The Bar Association is reportedly independent and impartial, free from external influence and free to take public positions on individual judicial decisions.

The Bar Association does not have an institute for the initial training of lawyers and so this is undertaken by universities. Such training is, however, not always sufficient and does not adequately prepare law graduates for the legal profession. There is no formal requirement that lawyers receive a specific amount of continuing education. To remedy these problems, a draft law on the training of applicants, initiated by the Ministry of Justice in 2003, is being developed together with the Bar Association.

Cases

Lawyers are sometimes identified with their clients' cause. A number of lawyers have been subjected to intimidation or pressure during the period in question for having defended sensitive cases.

Naïma Saker, a human rights defender, and **Sofiane Chouiter**, a human rights lawyer, who both work for the families of the disappeared, were subjected to constant harassment and intimidation. Sofiane Chouiter was regularly followed after sit-in demonstrations. He also had some administrative difficulties in **November 2003** when his request to have his passport renewed was blocked. The ban was later lifted.

Other lawyers who have been subjected to government pressure, reportedly due to their human rights or political involvement, include **Ali Yahia Abdenour** and **Tahri**. We note the acquittal on 16 October 2003 of **Salaheddine Sidhoum** who, after spending nine years in hiding, gave himself up to the Algerian legal authorities on 29 September 2003 (http://hrw.org/press/2003/10/algeria101703.htm).

No cases of criminal proceedings against lawyers for actions or statements related to the discharge of their duties were reported during the period.

PROSECUTORS

Prosecutors are part of the judiciary. They are subject to the same statutory provisions as judges and face the same hurdles. They undergo the same training and are accountable to the Higher Judicial Council. They are affiliated to the same professional association as judges, the National Judges' Association. Nevertheless, prosecutors enjoy less independence than judges as they may receive direct orders from the Ministry of Justice, which they are bound to obey. In addition, prosecutors can be transferred in the best interests of the service; the Higher Judicial Council makes decisions regarding their transfer and promotion. They reportedly face interference, pressure and unwarranted requests from the executive. Women are not well-represented in the profession.

Enforcement of decisions in criminal matters is the responsibility of public and general prosecutors. When subjected to influence, they have reportedly delayed or suspended enforcement but, as a rule, decisions that are deemed to constitute *res judicata* are enforced. In civil matters, bailiffs are responsible for the enforcement of judicial decisions. Since *Law N° 91/03* of 8 January 1991 (*Journal Officiel 02/91*) came into force, bailiffs have been responsible for managing their own public offices, under the supervision of the public prosecutor. This is reportedly an area in which there may be corruption or interference, due also to poor training.

ACCESS TO JUSTICE

The population at large is aware of its most fundamental rights, although a minority are not, due to lack of information. In law (the Constitution, *the Code of Criminal Procedure* and the *Law on Legal Assistance*), every person has the right to defend any charges brought against him or her, either in person or through a lawyer.

Access to lawyers and quality representation for persons of limited means remains difficult, although legal assistance is available by law for people who cannot afford it. To the extent that a person has the financial means, he or she has access to a lawyer of his or her own choice. Even though legal fees are not high and legal aid exists, effective access to justice for vulnerable members of the population, women or minority groups remains difficult.

The right of a detainee to consult with his or her lawyer without delay and in full confidentiality is guaranteed under the law on organization of the legal profession. According to article 105 of the *Code of Criminal Procedure* (CPP), the accused must be questioned by a judge in the presence of legal counsel unless that right is expressly renounced. The laws of 10 November 2004 (*Loi N° 04-15* --JORADP N° 71, 2004) and 26 June 2001 (*Loi N° 01-08)* amending the *Code of Criminal Procedure* reinforce the right to legal counsel. Prosecutors are under an obligation to inform the accused of this right (article 59 of the CPP).

Reportedly, the judiciary does not always ensure that judicial proceedings are fairly conducted or that the rights and needs of the parties are respected; proceedings are often summary and procedures not always followed. There is a relatively heavy backlog of both civil and criminal cases. At the Supreme Court and Council of State

level, although the number of cases concluded each year is high, it far from covers all registered cases. In 2002, 30,000 cases were pending before the Supreme Court and over 9,000 before the Council of State. The situation seems to be worsening.

Legal aid

Legal aid covers all legal expenditure involved in the enforcement of court decisions. The State meets the expenses, and the fees of the lawyers appointed are paid by public funds. Lawyers are appointed by the court. It is compulsory for people with disabilities and minors to receive the assistance of legal counsel in criminal matters.

The President of the Bar may also ask lawyers to undertake *pro bono* work. Lawyers cannot refuse to do so unless the President of the Bar agrees with the reasons they give for not doing it. In practice, lawyers appointed to work on a *pro bono* basis reportedly do the minimum required and often allow trainee lawyers to handle such cases.

LEGAL REFORMS DURING THE PERIOD

2002:	Department for the General Management of Modernization of the Justice System created to improve judges' working conditions.
October 2002:	*Presidential Decree N° 02-325* of 16 October 2002 increasing judges' pay.
2003:	A bill on the training of law applicants, initiated by the Ministry of Justice in 2003, is being drafted.
2003:	Introduction of a bill by the Ministry of Justice to amend the law on organization of the legal profession, allowing the Public Prosecutor to intervene in disciplinary action.
2003:	Introduction of a draft code of ethics for judges, currently under discussion.
September 2004:	Two organic laws relating to the status of the judiciary and the Higher Judicial Council respectively were passed.
November 2004:	Amendments to the *1966 Penal Code* and *Code of Criminal Procedure* were passed.

General Country Information

a. Legal system overview

Rule of law and independence of the judiciary

The legal system in Algeria is one of social justice, based mainly on French law within the civil law tradition. Only the *1984 Family Code* has its origins in Islamic law. The principle of separation of powers is enshrined in the 1996 Constitution.

Since independence in 1962, Algeria has had two Constitutions. The first was approved by a constitutional referendum in 1963 and established Algeria as a republic that is committed to socialism and the preservation of its Arab and Islamic culture. It was suspended in 1965 until the National Charter and a new Constitution was drafted in 1976. The new Constitution was enacted in 1989 and amended in 1996 and 2002 (*Loi N° 03-02*) (see United Nations Development Program (UNDP), Program on Governance in the Arab Region, Algeria: Constitution).

The Chief of State is the President, who is elected by popular vote for a five-year term. The Head of Government is the Prime Minister, who is appointed by the President who also appoints the Cabinet of Ministers. The legislature consists of a bicameral Parliament. The National People's Assembly *(Al-Majlis Ech-Chaabi Al-Watani)*, the lower house, has 389 members who are elected by popular vote for a five-year term. The National Council *(Majlis el Ouma, Conseil de la Nation)*, the upper house, has 144 seats, two-thirds of which are elected by the local (state) assemblies, and the remaining one-third appointed by the President. The Constitution gives the Parliament a clear mandate to control the actions of the executive (see UNDP, Program on Governance in the Arab Region, Algeria: Legislature). It also protects fundamental individual rights, which are also covered in the *Penal Code* and *Code of Criminal Procedure*.

The independence of the judiciary is enshrined in article 138 of the 1996 Algerian Constitution. Articles 147 and 148 provide that judges are subject solely to the law, and are protected against all forms of pressure. Although article 145 of the Constitution stipulates that state organs must take steps to enforce judicial decisions, this is not always the case, particularly with regard to decisions that go against the administration. *De facto* control of the administration of justice lies with the President and the Ministry of Justice. Since 1998, a number of draft laws have sought to change this and, eventually, in September 2004, two organic laws relating to the status of the judiciary and the Higher Judicial Council were passed.

Algeria has ratified the main international human rights and humanitarian law instruments, namely the *International Covenant on Civil and Political Rights* and its *First Optional Protocol*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention for the Elimination of all forms of Racial Discrimination*, the *Convention for the Elimination of All Forms of Discrimination Against Women*, the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and the *Convention on the Rights of the Child*. It is a party to the *African Charter on Human and Peoples' Rights* and has also

ratified its additional *Protocol establishing the African Court of Human and Peoples' Rights*. The court came into existence on 25 January 2004. Algeria has not made a declaration under article 34(6) of the Protocol concerning the right of individuals to bring cases to the Court (see International Federation of Human Rights News, http://www.fidh.org/article.php3?id_article=405). In addition, on 22 April 2002 in Valencia (Spain), Algeria signed the *Euro-Mediterranean Agreement* with the European Union which contains human rights safeguards.

By being a signatory to these human rights instruments, Algeria has committed itself to making submissions to various reporting procedures and treaty administering bodies, such as the UN Human Rights Committee and the African Commission for Human and Peoples' Rights. Nevertheless, in practice, these mechanisms have very little influence in Algeria.

Judges do not usually cite international or regional instruments or overrule domestic legislation that is incompatible with them. Protection of civil liberties and human rights is the responsibility of the judiciary, but in practice is rarely enforced.

Constitutional Council

The Constitutional Council, created by the 1989 Constitution, reviews the constitutionality of treaties, laws and regulations, and has the power to invalidate unconstitutional acts. It can also rule on the validity of presidential and local elections (see UNDP, Program on Governance in the Arab Region, Algeria: Judiciary). Under article 166 of the Constitution, three people are entitled to call upon the Constitutional Council to render an opinion: the President of the Republic, the Speaker of the National People's Assembly and the Speaker of the National Council. Thus, while it is independent in theory, this requirement limits that independence. There have been claims that the President may influence this body.

The Council was criticized by the press and other presidential candidates when it rejected Taleb El-Ibrahimi's candidacy for the 2004 presidential elections.

In November 2002, it also declared the new *Law on the Status of Judiciary* to be unconstitutional. The grounds it gave were considered to be largely unconvincing (see Latest Developments above, and also Judicial Council below).

In addition, there are several consultative bodies such as the High Islamic Council and High Security Council, which deal with religious and security affairs respectively, and the two High Commissioners, one for the Arab language and the other for *Amazighité* (Berber identity).

The law-making process

The government and 20 members of the Assembly have the right to initiate laws (see UNDP, Program on Governance in the Arab Region, Algeria: Legislature). The lower house of Parliament is constitutionally empowered to initiate laws but it rarely does so. The Ministry of Justice initiates legislation relating to the administration of justice and civil rights and liberties.

In accordance with article 119 of the Constitution, all draft laws initiated by the government must be submitted to the Council of State for its consideration before they are forwarded to the Council of Ministers. In practice, it is reportedly the executive that has real control of the drafting of legislation. Organic laws are automatically submitted to the Constitutional Council while ordinary laws may be submitted to it only at the request of the President of the Republic, the President of the National People's Assembly or the President of the National Council.

Legislation is mainly drafted by judges from the Ministry of Justice. Judges, lawyers, university professors and other jurists are also being increasingly drawn into this process, and specialized committees have been created to cover different areas of law. Recently, the National Judges' Association, the Bar Association and other professional associations have been involved in drafting legislation concerning the judicial sector, such as the law on organization of the judiciary. Their participation has brought positive results despite differences of opinion with the Ministry of Justice. The media only occasionally influences the law-making process but when it does, the private press can effectively block draft legislation.

Ombudsman

There is currently no ombudsman's office although such a body, known as *Médiateur de la République,* existed between 1994 and 1999. It was abolished by the then newly-elected President Bouteflika and has not been re-established since. However, *Law N° 01-08* of 26 June 2001, which amended the *Code of Criminal Procedure*, established a Compensation Commission to be presided over by the first President of the Supreme Court and made up of judges from the Supreme Court. It rules on claims filed by victims of judicial errors or unjustified detention. On the other hand, complaints against the State with regard to problems in the court system are heard by the administrative courts.

Public immunity

Article 109 of the Constitution grants parliamentary immunity to members of the two parliamentary chambers so that they cannot be subject to civil or criminal action or pressure for the views they express while performing their duties. However, this immunity can be lifted by Parliament at the request of a prosecutor. Under article 110, lawsuits cannot be brought against them unless the person concerned has explicitly waived their immunity or authorization has been given by a majority of the People's National Assembly or Council of Nation as appropriate (http://www.oefre.unibe.ch/law/icl/ag__indx.html). If a member of either chamber is caught *in flagrante delicto*, he or she may be arrested.

Articles 573 *et seq*. of the *Code of Criminal Procedure* set out a special procedure for complaints against judges, ministers and other senior public officials. They do not have immunity (see *Titre VIII Les crimes et délits commis par des membres du Gouvernement, des magistrats et certains fonctionnaires*). In practice, no minister has ever been prosecuted while in office. As for the President and Prime Minister, article 158 of the Constitution establishes the High Court of State (*Haute Cour)* to try acts of high treason by the President and offences committed by the Prime Minister while in power. A bill seeking to establish this court was initiated in 1998 but has not been

submitted to Parliament.

Sources of law

According to article 1 of the *1975 Civil Code*, written law is the primary source of law. In the absence of a legal provision, the judge will decide according to the principles of Islamic law (second subsidiary source) and, failing that, according to custom (third subsidiary source). Lastly, natural law and principles of fairness are taken into account (article 1 of the *Civil Code*).

The *1966 Penal Code* and the *Code of Criminal Procedure* have been amended several times, the last time being on 10 November 2004 (*Lois N° 04-14 and N° 04-15 --JORADPN°71, 2004*) with a view to incorporating international human rights standards. Amendments to the *Penal Code* introduced on 26 June 2001 (L*oi N° 01-09, Loi N° 01-08* in the case of the *Code of Criminal Procedure)* increase the penalties for "press crimes" and limit freedom of expression by laying down a prison term of up to one year and a fine of up to 250,000 Dinars (US$3,200) for defaming the President. Similar punishments are laid down for defaming Parliament, the courts or the military. In 2002, these new laws were used by government officials, resulting in self-censorship among many journalists (see The Committee to Protect Journalists, *Attacks on the Press 2002*).

Other legislation includes the *1975 Civil Code*, the *1966 Code of Civil Procedure* and the *1975 Commercial Code*.

Judicial decisions may only be reversed by appeal to a higher court. The court of final appeal is the Supreme Court. Decisions taken by criminal courts *in absentia* are automatically annulled once the convicted person is arrested or surrenders (article 326 of the *1966 Code of Criminal Procedure*), Lower courts are bound by the decisions of higher courts. In practice, however, this is reportedly not always the case. Higher courts themselves do not systematically comply with their own earlier decisions, leading to occasional contradictory rulings.

Publication of legislation and judicial transparency

The government's General Secretariat is responsible for the publication of all laws and regulations, which are published in the Official Gazette *(Journal Officiel de la République Algérienne)* in both French and Arabic. They are also available online (See http://www.joradp.dz and http://www.droit.mjustice.dz/). Private publishers provide annotated codes and commentaries, both in print and electronic format. The Supreme Court has a journal, established under *Executive Decree N° 90/141* of 19 May 1990, to publicize how legislation is enforced and ensure that it is implemented consistently by all courts and tribunals.

Court proceedings are open to the public and the press (article 144 of the Constitution, http://www.oefre.unibe.ch/law/icl/ag__indx.html) although the media only attends the most well-known cases. The only restrictions imposed on reporting relate to proceedings involving minors, cases concerning personal status, and those that may harm public order or morals (article 285 of the *Code of Criminal Procedure*). Court files are available only to lawyers and the parties during the proceedings. The public

can access the final judgment. Lawyers, law professors, researchers and students can access case law at the Supreme Court library.

The higher courts also publish some case law in their periodicals and on line. Electronic compilations, private commentaries and case reviews are also available, although not all judicial decisions are reported. A project is being carried out to electronically link all courts and provide easier access to their case law.

New counter-terrorist measures

Most existing anti-terrorist measures were taken in 1992 with the introduction of the state of emergency and establishment of special courts. A 12-month emergency was imposed on 9 February 1992 and extended indefinitely at the end of that period. In October 1992, an emergency "anti-terrorist" decree was passed and incorporated, virtually in its entirety, into permanent legislation. This decree, which is still in force today, raises a number of concerns.

Legislative Decree N° 92/03 of 30 September 1992 on combating terrorism, which was subsequently amended and supplemented by *Legislative Decree N° 93/05* of 9 April 1993, establishes a framework for the punishment of terrorists acts. In 1995, following the abolition of the special courts, the substance of the two decrees was incorporated into the *Penal Code* and the *Code of Criminal Procedure*. These provisions are controversial: the definition of "terrorist crimes" is very broad, the police detention period can be extended for up to 12 days, and the four-month pre-trial detention period can be renewed up to 11 times. The establishment of minimum terms of imprisonment, and the placing of 16-year-old minors under the jurisdiction of the criminal courts are also controversial issues.

The *1966 Penal Code* and the *Code of Criminal Procedure* were amended on 10 November 2004 (*Lois N° 04-14 and N° 04-15 --JORADP N° 71, 2004)* to comply with the *2000 International Convention Against Transnational Crime* and its two additional protocols which have been ratified by Algeria. The rights of defence counsel were strengthened, sexual harassment was made a punishable offence, and a definition of torture, albeit not in line with international standards, was provided. A number of other concepts were also introduced, including the non-applicability of statutes of limitations in the case of serious offences and the submission of corporate bodies to criminal liability.

Algeria has also ratified a number of international counter-terrorist instruments: the *1999 Conventions on the Prevention and Control of Terrorism* adopted by the League of Arab States, the Organization of African Unity and the Organization of the Islamic Conference (see Algeria's first report to the UN Counter-Terrorism Committee submitted pursuant to paragraph 6 of Security Council Resolution 1373 (2001), reference S/2001/1280, of 27 December 2001). In accordance with *UN Security Council Resolution 1373 (2001)*, a domestic mechanism was set up in April 2002 to put a stop to the financing of terrorist organizations and money laundering. *Executive Decree N° 02-127* of 7 April 2002 established the Financial Information Processing Unit *(Cellule de traitement du renseignement financier)*. Banking and professional secrecy cannot be used as an argument vis-à-vis this body. A new law on money

laundering in which its powers are determined was passed by the lower chamber of Parliament in December 2004.

b. The judiciary

Judicial structure

The Algerian judicial structure is heavily influenced by the French system and has two parallel jurisdictions – ordinary and administrative. Judges from both branches form part of the judicial body and are accountable to the Higher Judicial Council. The criminal law system is based on the civil law model, and uses a mixed inquisitorial and accusatorial procedure.

The courts, courts of appeal and Supreme Court have ordinary jurisdiction (for the territorial jurisdiction of courts, see *"Compétence territoriale des cours et tribunaux algériens")* while administrative jurisdiction, which is described in articles 152 *et seq*. of the Constitution (see http://www.oefre.unibe.ch/law/icl/ag__indx.html), is vested in the Council of State (*Conseil d'Etat)* and an administrative division within each court of appeal. First instance administrative courts were created in 1998 but have so far not been put into operation. The Conflicts Court (*Tribunal des Conflits)* (a civil court) arbitrates conflicts of jurisdiction between the two branches.

The judiciary has a three-tiered structure. It consists of a Supreme Court, the courts of appeal and a system of lower courts comprising civil, criminal and commercial chambers. First instance courts *(daira)* are presided by a single judge. At second instance, provincial courts *(wilaya)* have three-judge panels. They hear appeals from the first instance courts and are organized into chambers at regional level. The four chambers are: civil, criminal, administrative and indictment (see UNDP, Program on Governance in the Arab Region, Algeria: Judiciary). The Supreme Court is the highest judicial authority and hears appeals from provincial courts. It is the national court of last resort.

The upper courts are provided for in the Constitution and established by means of organic laws (see article 122 of the Constitution, http://www.oefre.unibe.ch/law/icl/ag__indx.html). As far as the competence of each court is concerned, the *Codes of Civil and Criminal Procedure* deal with civil, criminal and commercial matters while article 143 of the Constitution (http://www.oefre.unibe.ch/law/icl/ag__indx.html) covers the administrative courts which hear cases involving the conduct of the administration and matters relating to State liability.

The Supreme Court, the Council of State and the Conflicts Court are established under article 152 of the Algerian Constitution. The Supreme Court governs ordinary jurisdiction and the Council of State governs administrative jurisdiction. They ensure that case law remains consistent in all areas of law, including human rights claims. The Conflicts Court reviews conflicts of jurisdiction between the Supreme Court and Council of State.

Special Courts

No special courts exist in Algeria today. Article 122 of the Constitution regulates the judicial structure, and new jurisdictions are created by law. Parliament can pass a law creating a special court but all special courts that were established in the past have been abolished. The State Security Court was abolished in 1989, the economic section of the criminal court in 1990, and the Special Courts created in 1992 to hear terrorism cases were abolished in 1995. Since then, all cases have been heard by ordinary courts except those that come under the jurisdiction of military courts.

Military Courts

Military courts exist as a permanent jurisdiction under *Ordinance N° 71-28* of 22 April 1971, which was subsequently amended to become the *Code of Military Justice* (JORA N° 38 and 95 of 1971, and N° 05 of 1973, http://www.joradp.dz/HFR/Index.htm). This mechanism existed prior to the 1989 Constitution and needs to be brought into line with it and its subsequent amendments; work on a revised version began in 1998 but, as of December 2004, had not come into force.

The jurisdiction of the military courts was previously limited to members of the military but has been controversially extended to include civilians accused of state security crimes or terrorism under the emergency law. Under article 25 of the *Code of Military Justice*, military courts can, even in peacetime, hear cases involving crimes against state security as defined in the *Penal Code* when the penalty exceeds five years' imprisonment. However, civilians were last tried by military courts in 1991 and 1994. In recent cases when alleged terrorists have been brought before military courts, the latter have declined jurisdiction in favour of the regular courts.

Military courts are made up of three members, with only the president being a judge. The other two are military advisers who have no legal training. The prosecutors are military judges with a legal background who have been trained by the National Judges' Institute responsible for training civilian judges.

Civilian judges and prosecutors are appointed by joint order of the Minister of Justice and Defence Minister from among those who have at least the status of appellate judge (*conseiller*). Military judges and prosecutors are appointed by Presidential decree based on proposals submitted by the Defence Minister. Given that they are subject to the orders of their hierarchical superiors, they can be transferred from a case or a court without their consent.

Decisions by military courts can be appealed to the criminal chamber of the Supreme Court. Article 495 of the *Code of Criminal Procedure* sets the conditions for such appeals. The budget of these courts is regulated by the law on finances and supervised by the Defence Ministry. It is the responsibility of the military prosecutor to enforce judgments but they can be suspended by the Defence Minister who can order release on probation.

The *Code of Military Justice* generally includes the same procedural guarantees that apply in the ordinary courts but there are a number of differences. Police detention

can last up to 72 hours in military cases, as opposed to the usual 48 hours, without the related guarantees being available. When a military court sits as an indictment chamber, it oversees the decisions of the examining magistrate, thus incorporating the two incompatible functions of investigation and judgment. In strictly military cases, the defendant must obtain authorization from the presiding judge before choosing a lawyer. In August 2000, the Commission on the Reform of Justice presented its report to the President of the Republic, calling for the jurisdiction of military courts to be limited and the *Code of Military Justice* to be amended to bring it into line with *the Code of Criminal Procedure*. So far its recommendations have reportedly not been put into practice.

Higher Judicial Council

Judges are accountable to the Higher Judicial Council. The procedure followed for hearing complaints relating to the conduct and functioning of the judiciary seeks to ensure their independence.

The *1989 Law on the Status of the Judiciary* was amended in 1992 when the state of emergency was established. The amendments increased the executive's influence by changing the composition of the Council in its favour and transforming it into a merely consultative body with no binding authority. Since 1992, the Council has had no effective decision-making power in practice. To protest against this state of affairs, the most recent elections for judges' representatives were boycotted following a call by their professional association. The composition of the Council, though legal, is therefore neither representative nor legitimate. A new law (No. 04-12) reinstating the Council's powers under the Constitution came into force in September 2004 after being declared constitutional by the Constitutional Council. This is an important positive step for the judiciary. The work of judges is now regulated by *Law No. 04-11* of 6 September 2004 on the Status of the Judiciary (*Loi organique portant statut de la magistrature)* and *Law No. 04-12* of 6 September 2004 on the Higher Judicial Council (*Loi organique fixant la composition, le fonctionnement et les attributions du Conseil Supérieur de la Magistrature)*.

The Higher Judicial Council *(Conseil Supérieur de la Magistrature)* is responsible for supervising the careers of judges. Other judicial officers do not come under its responsibility. Its functions are set out in article 155 of the Constitution (http://www.oefre.unibe.ch/law/icl/ag__indx.html) while its composition and powers are set out in the September 2004 law on the status of the judiciary. The Council is presided over by the President of the Republic and comprises the Minister of Justice as Vice-President, the first President of the Supreme Court, the Attorney General to the Supreme Court, ten judges elected by their peers plus six public figures from outside the judiciary chosen by the President of the Republic (article 3 of Law N° 04-12 of 6 September 2004, http://www.joradp.dz/JO2000/2004/057/F_Pag.htm).

In contrast to the previous law, Council members serve a non-renewable four-year term. Elected members cannot be transferred, promoted or disciplined while in office (article 6 of *Law N° 04-12* of 6 September 2004); previously, it was possible for some members to receive promotions while serving on the Council. The Inspection Unit of the Higher Judicial Council carries out investigations and prepares disciplinary cases (article 60 of *Law N° 04-11*).

Court Administration

Court administration is the responsibility of each head of jurisdiction under the supervision of the Minister of Justice. The heads of jurisdiction within each court are the public prosecutor, the president of the court and the examining magistrate who are appointed by the Higher Judicial Council in accordance with the new *Law on the Status of the Judiciary (Loi N° 04-11 du 6 Septembre 2004 portant Statut de la Magistrature)*. The General Prosecutor, President of the Court of Appeal and President of the Supreme Court are appointed at the discretion of the President of the Republic following recommendations made by the Minister of Justice. Court clerks come under the supervision of prosecutors and their careers are managed by the Ministry of Justice.

Heads of jurisdiction have significant powers: they allocate cases, appoint judges to particular chambers and sections, and assign staff and budgets. These powers are reportedly often exercised without accountability, making them an effective means of exerting internal pressure on judges.

Budget and autonomy

The judicial infrastructure, i.e. financial, human and technical resources, is generally inadequate. The budget for the judiciary is proposed by the Ministry of Justice and distributed by the executive. Although the heads of jurisdiction are consulted, the executive has the final say on management of the budget. Funds are not always distributed on the basis of objective criteria but this has reportedly not been used as a means of punishing or rewarding the behaviour of judges.

Enforcement of decisions

Judicial decisions are provided in written form together with the reasoning behind them. Enforcement of decisions in criminal matters is the responsibility of public and general prosecutors. If subjected to influence, they can reportedly delay or suspend enforcement but, as a general rule, decisions that are deemed to constitute *res judicata* are enforced. In civil matters, bailiffs are responsible for the enforcement of judicial decisions. Since *Law N° 91/03* of 8 January 1991 (*Journal Officiel 02/91*) came into force, bailiffs must manage their own public offices under the supervision of the public prosecutor. This is reportedly an area where the presence of corruption and interference may be easier, partly due to their lack of training.

Judges' decisions cannot be subjected to retroactive "revision" by non-judicial bodies unless an amnesty law has been passed by Parliament or the President of the Republic exercises his prerogative of pardon.

c. Judicial Actors

c.1. Judges

Independence and impartiality

Judges are subject to the newly-enacted *Law on the Status of the Judiciary (Loi N° 04-11 du 6 Septembre 2004 portant Statut de la Magistrature)* which was eventually passed following several attempts to amend it by the previous legislature and two reviews by the Constitutional Council (see Decision N° 13/A.LO/CC/02 of 16 November 2002 on the constitutionality of the *Organic Law on the Status of the Judiciary*, Official Gazette N° 76 of 24 November 2002, and Decision N° 02/A.LO/CC/04 of 22 August 2004 on the constitutionality of *Organic Law on the Status of the Judiciary*, Official Gazette N° 57 of 8 September 2004, http://www.joradp.dz/JO2000/2004/057/F_Pag.htm).

According to Article 7, judges must refrain from making public comments or acting contrary to the principle of independence and impartiality (article 7 of law N° 04-11, http://www.joradp.dz/JO2000/2004/057/F_Pag.htm). Although in theory judges have unfettered freedom to decide cases impartially, in practice they are not completely independent and are subject to pressure. Judges are not always trained to resist corruption and other forms of enticement, and influential figures sometimes resort to executive interference. The most significant and urgent problem facing judges remains their precarious status as well as the pressure that can be exerted on them, especially in cases with political overtones or involving influential individuals.

The State and its agents are accountable for their actions before the administrative courts. When the administration is found liable, its legal agent must enforce the decision (article 320 and following of the *Code of Civil Procedure*). Article 138 bis of *Law N° 01-09* of 26 June 2001 amended the Penal Code so that civil servants who do not enforce judgments can be subjected to disciplinary action. If payment of financial compensation is refused, individuals can obtain compensation directly from the public treasury. This procedure was established under *Law N° 91-02* of 8 January 1991 (http://www.joradp.dz/JO8499/1991/002/F_Pag.htm).

Judges can disqualify themselves from participating in proceedings in which they feel unable to rule on the matter before them in an impartial way. The parties to a case may also ask for them to be disqualified. The procedures and conditions for disqualification are set out in the *Code of Criminal Procedure* (article 554 of the *1966 Code of Criminal Procedure*). Judges have not always been able to perform their duties diligently and efficiently because of a number of factors, including inappropriate case distribution that fails to take account of the complexity of judicial proceedings, the backlog of cases in courts, undue delays, understaffing and inadequate allocation of judges, lack of resources and qualified personnel, lack of motivation, corruption and incompetence. The situation has improved in recent years, and the authorities have taken steps to overcome the lack of resources by recently increasing the judicial budget and announcing new initiatives related to the recruitment and training of judges.

Internal independence

In practice, judges do not enjoy effective internal independence from their colleagues and superiors. Illegal pressures are often exerted on them by heads of jurisdiction acting of their own accord or on orders from the Ministry of Justice. Under article 6 of *Law N° 89-21*, heads of jurisdiction have responsibility for the administrative files of the judges within their jurisdiction and can therefore use those files to put pressure on them. Ministers in general regularly give orders or instructions to judges. In 1998, the Judges' Association, the Commission on Reform of Justice and the media condemned this illegal practice on several occasions. Moreover, in 2000, the Council of State overturned several directives ordering the suspension of judicial decisions.

The Ministry of Justice's Inspection Unit carries out regular supervision of judges. The inspectors, who are judges themselves, are responsible for exercising control over a specific jurisdiction and may intervene if there is a complaint, although it is the Minister of Justice who has the power to decide what follow-up should be taken based on the results of the inspection. The manner in which inspectors are appointed is controversial since it is at the discretion of the Minister of Justice.

Women and minority groups are represented within the judiciary. By the end of 2004, women comprised 33 per cent of judges and their numbers are increasing. In the past few years, women have outnumbered men in law schools.

Qualifications, appointment and training

Judges (*magistrats* - this includes both judges and prosecutors) are appointed by Presidential decree based on proposals from the Minister of Justice and following deliberation by the Higher Judicial Council (article 3 of *Law No. 04-11*). Judges are recruited from among law graduates by means of a competitive examination, after which they must follow a three-year course at the *Ecole Supérieure de la Magistrature* which is supervised by judges and civil servants (article 38 of *Law No. 04-11*, http://www.joradp.dz/JO2000/2004/057/F_Pag.htm). Courses are taught by jurists, law professors, lawyers and judges. Since 2001, the entrance examination has been organized on the same date each year and widely publicized. Over 3,000 candidates are examined each year. There is no pre-selection of candidates for the nomination and appointment of judges, and no discrimination is applied in the selection criteria. A number of conditions must be fulfilled before recruitment is possible. These are set out in article 37 of *Law No. 04-11* which has yet to be regulated (http://www.joradp.dz/JO2000/2004/057/F_Pag.htm).

Candidates come mostly from middle-class backgrounds and from all regions of the country. So far, there are no reports of judges having been appointed for inappropriate reasons.

Continuing education and specialist training were introduced in 2000 by the National Judges' Institute. Bilateral and multilateral agreements have been signed to obtain funding for the continuing education of judges. There is cooperation with institutes in France and other Arab countries, as well as with American and Canadian universities. The promotion of judges relies on their professional improvement, which is assessed both quantitatively and qualitatively by the first President of the Supreme Court in the

case of judges from that court, and by the president of the court in question in the case of other judges (article 52 of *Law No. 04-11*, http://www.joradp.dz/JO2000/2004/057/F_Pag.htm).

Security of tenure

After completing initial training, judges are appointed as trainee judges. They must undergo probation for a year before employment can be confirmed by the Higher Judicial Council. Article 26 of *Law No. 04-11* states that judges with ten years' service or more cannot be removed from office or transferred without their consent.

Judges receive a monthly wage as determined by law. According to article 17 of the new *2004 Law on the Status of the Judiciary*, the wage they receive must be sufficient to enable them to preserve their independence and appropriate to their duties and responsibilities (http://www.joradp.dz/JO2000/2004/057/F_Pag.htm). Judges' pay had for a long time been inadequate. However, their financial position and working conditions have improved over the past few years. Wages were slightly increased in October 2002 as a result of *Presidential Decree N° 02-325* of 16 October 2002. Judges are now among the highest paid civil servants. Other perks, such as bonuses and interest-free car and home loans, were also provided. In 2002, the Ministry of Justice's budget was also slightly increased and a Department for General Management of the Modernization of the Justice System was created to improve judges' working conditions.

As for retirement and pensions, the new 2004 law on the status of the judiciary makes judges subject to the same scheme as senior civil servants. Retirement age is set at 60 although it can be delayed upon request to 68 in the case of Supreme Court Judges or 65 in the case of others, or lowered to 55 for women judges. All qualifying judges are entitled to a pension, even those who have been subjected to disciplinary action.

Despite the improvements, the precarious status of judges remains a problem.

Freedom of expression and association

According to the law, judges are free to exercise their right to freedom of association, assembly and expression (article 32 of *Law No. 04-11*, http://www.joradp.dz/JO2000/2004/057/F_Pag.htm). In practice, however, this right is often obstructed and judges have been disciplined for speaking to the media about threats to their independence.

Judges cannot take part in political activities as this is considered incompatible with their position. They cannot stand as candidates in national or local elections, or join a political party. Judges who wish to engage in politics must first resign their post. They are also banned from undertaking professional activities other than teaching, scientific, artistic or literary activities (article 14 *et seq*. of *Law No. 04-11*).

Professional secrecy and immunity

Judges must respect professional secrecy or face disciplinary action (article 11 of *Law No. 04-11*, http://www.joradp.dz/JO2000/2004/057/F_Pag.htm). In the exercise of

their duties, judges are answerable only to the Higher Judicial Council in the case of civil suits (article 149 of the Constitution). Judges do not have immunity from criminal prosecution (article 30 of *Law No. 04-11*).

Discipline, suspension and removal

There is no official code of conduct for judges. However, in 2003, in the framework of the ongoing legal reforms, the Ministry of Justice set up a Commission made up of judges and representatives from the Judges' Association to draft a code of ethics for judges. A draft is currently under discussion. Complaints against judges are dealt with by the Ministry of Justice's Inspection Unit whose members are appointed by the Minister of Justice from among judges who are at least appellate judges (see, Judicial Council, above). The proceedings cannot be said to be independent as the Minister of Justice (the executive) directs them and eventually decides whether to open disciplinary proceedings, suspend the offending judge or order criminal proceedings to be opened against him or her (article 22 of *Law No. 04-12*, http://www.joradp.dz/JO2000/2004/057/F_Pag.htm). When a judge is suspended, unless a suit has been brought against him, the Higher Judicial Council must rule on the case within six months, failing which he or she should be fully reinstated (article 66 of *Law No. 04-11* of 6 September 2004, http://www.joradp.dz/JO2000/2004/057/F_Pag.htm). Decisions by the Higher Judicial Council can be appealed to the Council of State.

The disciplinary penalties applicable are set out in the *2004 Law on the Status of the Judiciary* and range from censure to removal. The Higher Judicial Council, when exercising its disciplinary function, is presided by the first President of the Supreme Court. In theory, it has the final decision but its independence and impartiality are not systematically assured. In some instances, judges have reportedly been disciplined without receiving a proper hearing. Disciplinary penalties can be appealed to the Higher Judicial Council and cases of abuse of power can be appealed to the Council of State which has overturned two decisions since 1998. The Higher Judicial Council then holds a formal meeting, and its decisions with regard to disciplinary proceedings are made public. There is no mechanism for protecting judges against malicious complaints.

Accountability and corruption

Matters relating to the assessment and promotion of judges are governed by *Law No. 04-11*. The rules of procedure are reportedly not always transparent. Judges' careers are managed in a mechanical fashion that does not always take account of their skills and merit. Rather, co-option and servility have enabled some judges to advance.

Article 24 of *Law No. 04-11* requires judges to periodically disclose their assets, failing which disciplinary action potentially ending in removal (article 62) can be taken. Article 126 of the *Penal Code* prohibits corruption and being a judge is deemed to be an aggravating factor entailing between five and 20 years' imprisonment. Although Algeria recently ratified the *2003 UN Convention against Corruption*, corruption remains endemic in the judiciary. The methods used to tackle the problem are not effective. There is reportedly a widespread perception among the general public that corruption in the judiciary is endemic.

Article 29 of *Law No. 04-11 on the Status of the Judiciary* stipulates that it is the responsibility of the State to protect judges against threats and defamation. In practice this protection does not always exist.

c.2. The Legal Profession

Independence

Defence rights are enshrined in the Constitution and guaranteed by law. As a general rule, lawyers are able to perform their professional duties free from intimidation, threat or interference. Cases of intimidation remain the exception, with the most blatant ones dating back to the days of the Special Courts. The legal profession is regulated by *Law No. 91/04* of 8 January 1991 which affirms its independence (article 1 of *Law No. 91/04* of 8 January 1991 (JORA 30/02), http://www.joradp.dz/JO8499/1991/002/F_Pag.htm)

Under article 2 of *Law No. 91/04*, legal representation, defence and assistance are guaranteed to the parties to proceedings. Lawyers are permitted to consult freely with their clients and to represent them in a court of law. As soon as proceedings are instituted, a copy of the file is left with the clerk for the use of the lawyer, and lawyers are given access to the necessary information to enable them to provide legal assistance to their clients.

However, lawyers are sometimes identified with their clients' cause. During the period in question, a number of lawyers have been subjected to intimidation or pressure for having defended sensitive cases.

A 2004 UN report on the situation of human rights defenders noted that they continue to be subject to multiple and lengthy legal proceedings in Algeria (http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/46196d7f0ac0ddd0c1256e75004c0ff4?Opendocument).

Article 91 of *Law No. 91/04* protects lawyers in the exercise of their professional duties (http://www.joradp.dz/JO8499/1991/002/F_Pag.htm). No cases of criminal proceedings brought against lawyers for actions or statements related to the discharge of their duties were reported during the period.

Qualifications and training

The legal profession is open solely to law graduates of Algerian nationality who are at least 23 years old. Candidates must follow a one-year course and obtain a legal practice certificate *(Certificat d'aptitude à la profession d'avocat)* before they can be offered a one-year traineeship in a law firm. This certificate was introduced as a result of the *1991 Law on Organization of the Legal Profession* (*Loi 91-04 du 8 Janvier 1991 portant organization de la profession d'avocat,)* and replaced an earlier provision requiring five years' professional experience.

As the Bar Association does not have an institute to provide initial training to lawyers, this is undertaken by universities. The training is, however, not always sufficient and does not adequately prepare law graduates for the legal profession. There is no formal requirement that lawyers should undertake a specific amount of continuing education. To remedy this, a bill on the training of law applicants, initiated by the Ministry of Justice in 2003, is being developed.

Article 1 of the *1991 Law on Organization of the Legal Profession* states that lawyers must aid observance of the rule of law and guarantee individual rights and liberties. Reportedly this is not always emphasized in official training courses for lawyers, and they are not made aware of the ideals and ethical duties of the legal profession or of the human rights and fundamental freedoms recognized in national and international law.

Duties and responsibilities

Confidentiality between lawyers and clients is guaranteed under Title X of *Law No. 91-04* of 1991 which sets out lawyers' rights and duties (see article 76, http://www.joradp.dz/JO8499/1991/002/F_Pag.htm). Article 79 similarly states that lawyers are prohibited from communicating information relating to their clients' cases to third parties (http://www.joradp.dz/JO8499/1991/002/F_Pag.htm). In addition, articles 80 and 91 provide for the non-violability of lawyers' premises and their relationships with their clients, including correspondence and files (http://www.joradp.dz/JO8499/1991/002/F_Pag.htm). This confidentiality is generally respected. There is, on the whole, no deliberate attempt to prevent lawyers from carrying out their duties.

Freedom of expression and association

Lawyers are organized into Bar Associations which are grouped together in a National Union of Bar Associations *(Union Nationale des Barreaux)*. The right to set up organizations, associations, and collective law firms is guaranteed in the *1991 Law on Organization of the Legal Profession* (see Titles V and VII, *loi N° 91-04 portant organisation de la profession d'avocat,* http://www.joradp.dz/JO8499/1991/002/F_Pag.htm). In practice, these rights are not hampered. The only reported infringements relate mainly to the behaviour of individual judges or prosecutors. Lawyers are allowed to participate in public discussions of legal matters and some are very active in doing so.

Professional associations

The relevant laws are *Law No. 91/04* of 8 January 1991, the internal rules of the Council of the Bar and the regulations relating to their own professional association. Members of the Council of the Bar *(Conseil de l'ordre des avocats)* are elected. The Council regulates matters relating to membership of the Bar, the training of lawyers, exercise of the profession and discipline.

The legal profession is effectively independent. Unlike that of judges, the status of lawyers has not been affected as a result of the longstanding state of emergency. The pressures experienced by lawyers defending cases before the Special Courts

disappeared together with the latter in 1995. The Bar Association is reportedly independent and impartial, free from external influence and free to take public positions on individual judicial decisions.

Disciplinary proceedings

There are no guidelines or code of professional conduct for lawyers. Hence the grounds for taking disciplinary action are not defined in law. They can range from a warning to censure to suspension, and eventually disbarment (article 49 of the *1991 Law on Organization of the Legal Profession*, http://www.joradp.dz/JO8499/1991/002/F_Pag.htm).

The procedure to be followed in disciplinary proceedings is set out in the*1991 Law on Organization of the Legal Profession*. The Council of the Bar elects the members of the Disciplinary Council and the procedure followed by the latter provides fair trial guarantees. Decisions of the Disciplinary Council can be appealed to the National Appeal Commission *(Commission Nationale de Recours)* which has seven members (three Supreme Court Judges designated by decree of the Minister of Justice and four former Presidents of the Bar chosen by the Council of the National Lawyers' Association).

The Disciplinary Council has rarely taken action against lawyers. The few cases it has dealt with related to serious breaches of discipline. For this reason, in 2003, a bill was introduced by the Ministry of Justice with a view to amending the law on organization of the legal profession in order to allow the Public Prosecutor to intervene in disciplinary actions. This proposal is, however, far-reaching and disproportionate and, rather than reinforcing legitimate discipline, could be counterproductive and jeopardize the independence of the Bar and lawyers in general.

c.3. Prosecutors

Independence

Prosecutors belong to the judiciary and are themselves judges (*magistrats*). They are subject to the same statutory provisions as other judges, follow the same training as them and are accountable to the Higher Judicial Council (see section Judges, above). However, they enjoy less independence as they may receive direct instructions from the Ministry of Justice, which they are bound to follow. In addition, they can be transferred in the best interests of the service. The Higher Judicial Council decides on their transfer and promotion. Women are not well-represented in the profession.

Status and conditions of service

Prosecutors are affiliated to the same association as judges - the National Judges' Association. They reportedly experience interference, pressure and unwarranted requests from the executive.

Role in criminal proceedings

The criminal system in Algeria is based on the principle of discretionary prosecution (*opportunité des poursuites)* which means that it is left to the discretion of the prosecutor whether to proceed with a criminal action or close the case unless an order to the contrary has been received from the Minister of Justice. However, once the prosecutor has embarked on a public prosecution, he cannot close it as that decision resides with either the court or the examining magistrate.

Prosecutors direct the preliminary investigation and supervise the work of the judicial police. They also decide whether the time spent in police custody should be extended. If the prosecutor decides to institute proceedings, the examining magistrate or the indictment chamber of the court decide what detention measures may be necessary. The prosecutor has the power to appeal all decisions taken by criminal courts to a higher court. He can also appeal decisions taken by the appeal courts before the *Cour de Cassation*.

In the event of crimes committed by public officials, prosecutors may only intervene upon receipt of an order from the Ministry of Justice.

d. Access to Justice

Access to justice

The population in general is aware of its fundamental rights although a minority do not have access to information.

According to the law (the Constitution, the *Code of Criminal Procedure* and the *Law on Legal Assistance*), everyone has the right to defend themselves, either in person or with the assistance of a lawyer, against any charges brought against him or her. Access to lawyers and quality representation for persons of limited means remains difficult, although the law provides for legal assistance for those cannot afford it. Effective access to justice for vulnerable members of the population, women and minority groups is also difficult. To the extent that a person has the necessary financial means, he or she has access to a lawyer of their choice. Even though legal fees are not high and legal aid exists, access to justice is, in practice, not easy for women, children, poor people or other vulnerable groups.

Although sexual harassment was made a criminal offence in 2004, Algeria's legislation does not specifically protect women and minority groups. However, the legislative framework guarantees, at least formally, the protection of children and disabled people. In particular, criminal law establishes extremely severe penalties in the event of sexual or physical abuse of children or disabled people. The age of the victim is taken into consideration as either a factor triggering liability or an aggravating circumstance. Other factors that are taken into account include the family relationship between the victim and the defendant, and whether the latter was in a position of authority over the victim.

Law No. 01/08 of 26 June 2001, amending and completing the *Code of Criminal Procedure*, obliges police officers to inform detained persons of their rights and to allow them to communicate with their relatives as well as receive visitors (articles 51 *et seq.*). The right to legal advice is not guaranteed while in police custody. According to article 105 of the *Code of Criminal Procedure*, the accused must be questioned by a judge in the presence of his or her legal counsel unless that right has been expressly waived. The laws of 10 November 2004 (*Lois N° 04-15* --JORADP N°71, 2004) and of 26 June 2001 (*Loi N° 01-08)* amending the *Code of Criminal Procedure* have strengthened the right to legal counsel once the accused has been indicted. Prosecutors are under an obligation to inform the accused of this right *(*article 59, *Code of Criminal Procedure*).

The right of a detainee to consult with his or her lawyer without delay and in full confidentiality is guaranteed under the provisions of the law on organization of the legal profession.

Fair trial

In criminal matters, all first instance judgments can be appealed. Decisions of the criminal division of the Court of Appeal can only be appealed to the *Cour de Cassation*. All judgments must be pronounced in public even if the proceedings were held *in camera* (article 144 of the 1996 Constitution (http://www.oefre.unibe.ch/law/icl/ag__indx.html).

The judiciary reportedly does not always ensure that judicial proceedings are fairly conducted and that the rights and needs of the parties are respected. Proceedings are often summary and procedures not always followed.

The backlog of cases is relatively high, both in civil and criminal matters. At the Supreme Court and Council of State level, although the number of cases concluded each year is high, it is far from sufficient for all registered cases to be dealt with. In 2002, 30,000 cases were pending before the Supreme Court and over 9,000 before the Council of State. The situation seems to be worsening.

Legal aid

Ordinance 71/75 of 5 August 1971 concerning judicial assistance establishes the conditions and procedures for granting legal aid to poor people and associations acting in the public interest. Legal aid covers all legal expenditure relating to the enforcement of court decisions. The State meets the expenses.

Since the enactment of *Law No. 01/06* of 22 May 2001, which amended and completed *Ordinance 71/75*, the fees of the lawyers appointed are paid from public funds (article 3, *Loi N° 01-06 du 22 Mai 2001 modifiant et complétant l'ordonnance N° 71-57 du 5 Août 1971 relative à l'assistance judiciaire,* http://www.joradp.dz/JO2000/2001/029/F_Pag.htm). The lawyers are appointed by the courts. It is compulsory for disabled people or minors to be assisted by legal counsel in criminal matters.

Lawyers can also be asked by the President of the Bar to undertake *pro bono* work in accordance with article 77 of *Law No. 91/04* of 8 January 1991 on organization of the legal profession, which sets out the terms and conditions for doing so. Lawyers cannot refuse to do such work unless the President of the Bar accepts the reasons why they are unable to do so. In practice, lawyers appointed to do *pro bono* defence work reportedly do the minimum required and often allow trainee lawyers to handle the case.