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Global study on the impact of counter-terrorism measures on civil society and civic space in Algeria

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Introduction

Algeria: Counterterrorism legislation in Penal Code weaponized by the authorities to stifle human rights advocates and trade unions¹

Algerian human rights organizations condemn the amendment of Article 87 bis of the Penal Code, which represents an attempt by the Algerian authorities to stifle peaceful dissidents by labeling them terrorists. The organizations are concerned with the documentation of human rights violations by the authorities in Algeria, where more than 267 people have been arrested and prosecuted solely for their peaceful exercise of free expression and association. Detainees include lawyer Abderraouf Arslane, blogger and human rights defender Zaki Hannache, civil society activist El Hadi Lassouli, journalist Ihsane El Kadi, activist Jamila Loukil, and member of the Algerian League for The Defence of Human Rights Kaddour Chouicha.

Article 87 bis 3², used by the authorities to criminalize freedom of association and labelled as as terrorist groups. Lawyers who are members of the defense committee for the Hirak protest movement detainees have been heavily targeted and prosecuted by the authorities. On 26 May 2021, lawyer Abderraouf Arslane was arrested and tried on charges of participating in a terrorist organization and publishing false news that would harm public security and public order, in retaliation for his work and for exercising his right to freedom of expression. Lawyers Mohamed Bendahman and Mohamed Makkawi were suspended from their practice without any justification, on 25 April and 25 May respectively. Many women members of the defense committee for Hirak detainees further reported that they were targeted by defamation campaigns.

The widening definition of terrorism under Article 87 bis 3, established by the 8 June 2021 presidential decree, looms dangerously over any citizen expressing a critical view of the regime. Since March 2021, dozens of people have been prosecuted for “belonging to a terrorist organization”, including Algerian journalists, trade unions activists, media workers and local

¹ Raouf Mellal, President of the Trade Union Confederation of Productive Forces (COSYFOP), an Algerian union registered in 1991 and not yet recognized by the Algerian government.

² **Art. 87 bis 3. (New)** - Anyone who creates, founds, organizes or directs any association, body, group or organization whose purpose or activities fall within the scope of the provisions of article 87 bis of this ordinance, is punished by life imprisonment. Any membership or participation, in any form whatsoever, in the associations, bodies, groups or organizations referred to in the above paragraph, with knowledge of their purpose or activities, is punishable by a term of imprisonment of ten (10) to twenty (20) years.

human rights groups on the basis of Article 87 bis 3 of the Penal Code, and a large number of them remain in pre-trial detention.

The Penal Code counterterrorism legislation's deliberate use of broad and vague terminology to define terrorism represents one of the most significant legal dilemmas related to the criminal status of people who can be listed as terrorists. Article 87 bis 13 of the Penal Code does not limit inclusion on the terrorist list to people who have been convicted of a terrorist crime under a final verdict of guilt, as stipulated in Article 87 bis of the same law. Instead, it expands the criteria to include people who are subject to preliminary investigation or judicial prosecution without completion of due process or a final verdict of guilt, in clear violation of the presumption of innocence stipulated in Article 41 of the Constitution.

In other words, a person can be included in the National List of Terrorist Persons and Entities even if they have not been legally convicted of terrorist acts. Although this inclusion is theoretically revocable, this does not preclude a violation of the presumption of innocence, which in turn is a violation of the constitutional principle that enshrines equality and equal protection before the law, according to Article 37 of the Constitution. Inclusion in the terrorists list is subject to publication in the Official Gazette in accordance with Article 87 bis 13 of the Penal Code and Article 15 of the Executive Decree, rendering it enforceable. This is a new amendment of Article 87 bis, which widens the criminalisation of any activism in the public space using vague wording and unconstitutional means to establish a harsh penalty, in addition to adding a national list of terrorist persons and entities and issued by the executive authorities.

The Algerian authorities utilize the pretext of combatting terrorism to suppress independent trade unions. On 30 June 2021, Ramzi Dardar, a member of the Trade Union Confederation of Productive Forces (COSYFOP), was arbitrarily arrested and detained for 17 months, until his release on 10 November 2022, after the Batna Criminal Court acquitted him of all charges. During his detention, Dardar was ill-treated by security forces during interrogation, and placed in confinement with terrorists on death row, in addition to four months in solitary confinement. The authorities perpetrated the same violations against unionist Kaddour Chouicha, head of the Syndicate of Solidarity Teachers of Higher Education, and his wife Jamila Loukil, and journalist Said Boudour, who were accused on 28 April 2020 of belonging to a terrorist or subversive organization, operating abroad or in Algeria, among other charges. From 2 January and 11 January 2022, four trade union leaders were arrested and imprisoned; Hichem Khat, Nasreddine Hamitouche, Nasreddine Rabou, and Mohamed Mselti. The four men, representing the National Independent Union of Workers of the National Electricity and Gas Company (SNATEG) and the Confederation of Trade Unions (COSYFOP), endured interrogation and detention for two weeks, until they were released pending trial. All four were prosecuted under Article 87 bis on charges of belonging to a terrorist organization through social media and forming a criminal organization that undermines national unity.

Members of the judiciary are also often targeted by disciplinary measures and arbitrary trials, jeopardizing the right to a fair trial and undermining the independence of the judiciary and the rule of law. On 30 May 2021, Judge Saadeddine Marzouk, founder of the unregistered union "Free Judges Club", was dismissed, and Deputy Public Prosecutor Ahmed Belhadi was issued a

warning, in retaliation for their support of the Hirak protest movement and their defense of judicial independence. In October 2019, head of the accusation chamber of the Tipaza Court, Noura Mikran, was dismissed and transferred to another court after her decision to release political activist Karim Tabbou. Belkacem Maza, a member of the Algerian League for the Defense of Human Rights, was arrested on 17 September 2020, and put on trial for participating in the Hirak protests. Murad Ghadiya, a court clerk and president of the National Union of Justice Sector Workers, was suspended from his work in 2018, then arrested in April 2021 as a result of his peaceful activism.

First name & Surname	Union affiliation & occupation	Date of arrest or conviction	Charges
Ramzi Dardar	Leader in the National League of Unorganized Sector Workers, and in the Trade Union Confederation of Productive Forces	30/06/2021 Imprisoned for 18 months	Belonging to a terrorist organization (Article 87 bis of the Penal Code).
Nasreddine Hamitouche	Commissioner of the Capital in the Trade Union Confederation of Productive Forces	30/01/2022 Arrested and detained for a week	Belonging to a terrorist organization (Article 87 bis of the Penal Code).
Mohamed Mselti	Member of the Communication Cell of the Trade Union Confederation of Productive Forces	11/01/2022 Arrested and detained for a week, and remains under judicial supervision	Belonging to a terrorist organization (Article 87 bis of the Penal Code).
Nasreddine Rarbou	Member of the Communication Cell of the Trade Union Confederation of Productive Forces	07/01/2022 Arrested and detained for a week, and remains under judicial supervision	Belonging to a terrorist organization (Article 87 bis of the Penal Code).
Hamza Kherroubi	President of the Algerian Union of Industries	In exile	Belonging to a terrorist organization (Article 87 bis of the Penal Code).
Amine Faleh	Leader of the National League for Unorganized Sector Workers and The Trade Union Confederation of Productive Forces	16/02/2022 Imprisoned for a month, then released and placed under judicial supervision	Belonging to a terrorist organization (Article 87 bis of the Penal Code).

Samia Tabbina	Leader in the Women's Committee of the Independent Syndicate for Public Administration Users	Convicted on 21/12/2021 and remains under judicial supervision	Belonging to a terrorist organization (Article 87 bis of the Penal Code).
Samia Sayyad	Leader in the Women's Committee of the Independent Syndicate for Public Administration Users	09/05/2022 Arrested and detained for a week, and remains under judicial supervision	Belonging to a terrorist organization (Article 87 bis of the Penal Code).