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Individual Criminal Accountability After Civil Wars: Enforced Disappearances in Algeria and Turkey

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LOYOLA UNIVERSITY CHICAGO

INDIVIDUAL CRIMINAL ACCOUNTABILITY AFTER CIVIL WARS: ENFORCED
DISAPPEARANCES IN ALGERIA AND TURKEY

A DISSERTATION SUBMITTED TO THE FACULTY OF THE GRADUATE
SCHOOL IN CANDIDACY FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
PROGRAM IN POLITICAL SCIENCE

BY

JESSICA G. MECELLEM

CHICAGO, IL

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To Leila Nora Mecellem

They tried to bury us. They didn't know we were seeds.

- Mexican Proverb used to protest disappearances there in 2014

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ABSTRACT

Increasingly, around the world, individuals are being held criminally accountable for human rights violations (Olsen, Payne and Reiter 2010; Sikkink 2011; Kim & Sikkink 2010, 2012; Kim 2010, 2012; Sriram 2005; Lutz & Reiger 2009). Katherine Sikkink (2011) characterized this change as a normative shift toward individual criminal accountability, which has resulted in a “justice cascade”, or a “revolution in accountability” (Sriram 2005). Much of the justice cascade literature has focused on the role of trials in democratizing countries. In contrast, this dissertation examines the impact of the norm of individual criminal accountability in two non-democratizing post-conflict contexts: Algeria and Turkey.

The dissertation examines two questions. First, how influential is the spread of the norm of individual criminal accountability in countries that have experienced gross human rights violations during civil wars? Second, what mechanisms can explain the emergence of domestic trials in these cases? Through analysis of data collected during fieldwork in Algeria and Turkey between 2014-2015, this dissertation focuses on the role of individual criminal accountability for enforced disappearances that were carried out in the context of civil war in both countries.

CHAPTER ONE
THE SPIRAL MODEL: POST CIVIL WAR CONTEXTS AND
AND HUMAN RIGHTS TRIALS

Increasingly, around the world, individuals are being held accountable for human rights violations (Olsen, Payne and Reiter 2010; Sikkink 2011; Kim & Sikkink 2010, 2012; Kim 2010, 2012; Sriram 2005; Lutz & Reiger 2009). International relations scholars write about this change as an “increase in salience” of the norm of individual criminal accountability (ICA hereafter) (Cortell & Davis 2002, 67). Katherine Sikkink (2011) has called the increasing number of ICA trials (domestic, international or foreign)¹ in the last three decades a “justice cascade” and Sriram (2005) hails it as a “revolution in accountability.” Most of the literature that studies this change from the perspective of international normative activity is framed in the context of democratization. Ní Aoláin and Campbell (2005) refer to this as the assumption of “paradigmatic transitions”, in which the movement toward democracy is considered relatively straightforward with a clean break from the former rights-abusing regime, to the present democracy-promoting government. This framing is specifically introduced in the foundational work on the ICA norm which claimed that the justice cascade “...will not extend to regions of the world

¹ Sikkink (2011, 24) makes the distinction between these three types of trials: domestic trials occur in the domestic court system of the country where the rights violations occurred; international trials take place in institutions and venues presided over by the international community, such as the tribunals for crimes committed in Yougoslavia or Rwanda; foreign trials are those that occur in the domestic legal system of one country but address crimes carried out in another country, under universal jurisdiction laws (e.g. the trial of Augusto Pinochet in Spain).

where democratic transitions have not taken root...or where democratic reversals are occurring” (2011 247-8). The rise of the ICA norm has generally been studied in contexts of democratization.

Another way to examine the increasing occurrence of ICA trials is through the use of the “spiral model” introduced by Risse, Ropp and Sikink (1999; 2013). This model explains the impact of international human rights norms (of which ICA is an example), on domestic political contexts. Although their original articulation of the spiral model was criticized to some extent for its teleological assumptions about the movement towards democracy, since its inception the model has been applied to both democratizing and non-democratizing countries. It is therefore a useful framework for examining the impact of the ICA norm in more complex cases where movement away from authoritarian governance is ambiguous. I use this model as a lens through which to examine the impact of the ICA norm in domestic contexts after civil war characterized by intense civilian victimization.

This dissertation answers the following questions:

- 1) How influential is the spread of the ICA norm in countries that have experienced gross human rights violations during civil wars?
- 2) What mechanisms can explain the emergence of domestic trials in these cases?

This dissertation answers these questions through a qualitative comparative case study based on fieldwork in Algeria and Turkey, and supporting analysis of primary and secondary sources. Algeria and Turkey experienced similar conflicts: both have endured civil wars, during roughly the same time period (1990s). However, these two cases are different in terms of the many variables currently used to explain the emergence of trials.

They are differently situated in terms of their relations to the international environment, their regime type, and the presence of domestic variables linked to the emergence of trials, such as private prosecution and judicial independence.

This chapter proceeds in four parts. It begins with an outline of the major argument made in the following pages. Next, there is a review of the literature that situates my questions in a larger scholarly framework, as well as an overview of the theories attempting to answer these questions. I then provide a brief outline of the methods used to collect data for this dissertation. The chapter closes with a summary of my contributions to the literature.

The Norm of Individual Criminal Accountability at the Domestic Level

To this point in the literature there have been few case studies looking at the ways the ICA norm manifests domestically. The literature has mostly focused on either theory building about international change (Sikkink 2011), or large n studies on the impact of the ICA norm internationally (Kim & Sikkink 2010; Kim 2010; Sikkink & Kim 2013; Olsen et al. 2010; Michel & Sikkink 2013). The purpose of this dissertation is to analyze in greater detail the mechanisms that facilitate one manifestation of the ICA norm - that is domestic trials for human rights abuses.

I first demonstrate that despite the fact that Algeria and Turkey differ greatly in terms of the major explanatory variables concerning the emergence of domestic trials these cases have been at surprisingly similar stages of the spiral model concerning ICA until 2008, when Turkey saw the opening of domestic trials for human rights abuses. I then demonstrate that the current explanations in the literature fail to explain what changed in Turkey in 2008 and why human rights trials are occurring while the regime is

becoming increasingly authoritarian. Additionally, although the current literature provides some insight into how these court cases have emerged in domestic Turkish courts, it does not adequately explain the timing of these trials, which have occurred while the Turkish state has become more authoritarian in multiple ways.

I argue that a key variable of interest has so far been overlooked in the literature: changes in the balance of power among elite actors. I contend that this factor is important in order to understand the way that the ICA norm can impact domestic contexts that are not clearly democratizing. To explain the divergence of the two cases starting in 2008, I argue that redistribution of power among elite actors in Turkey resulted in changes to the political opportunity structure available to prosecutors, and created a window of opportunity for the advancement of justice-seeking litigation by rights groups (Tilly & Tarrow 2011). When new executive actors prosecuted the military for crimes against the state (what I will refer to as coup trials), the litigation undermined the military's impunity, signaling to lower level judicial actors that the status quo of military immunity could no longer hold. In contrast, in Algeria, power relations among key elite actors (the military, the civilian executive and the opposition) have solidified and remained constant since the early 2000s. Therefore, the situation has inhibited the type of lower court activity that has occurred in Turkey.

I build on arguments made in the literature on power distribution theory - the claim that policy decisions regarding justice are determined mainly by domestic political power switches from previous authoritarian elites to a new government seeking policies to address justice (Huyse 1995; Nino 1996; Pion-Berlin 1994; Skaar 1999; Zalaquett 1992). I add to this theory by demonstrating that elites do not need to be pro-human

rights, nor ushered in by a dramatic transition. I contend that changes in power distribution can alter the former rules of the game (such as de facto impunity for military officials), rendering them ambiguous for key actors and ultimately allowing for individual activity that was previously high risk, such as the filing of indictments against military officials for human rights crimes.

International Normative Change and Individual Criminal Accountability

Sikkink's influential work (2011) provides a broad outline of the dynamics of normative change regarding justice for human rights abuses at the international level. She documents initial domestic activity in Latin America and Southern Europe at the end of military dictatorships in the 1970s. She then shifts to the international realm to document the rise of two sets of political phenomena: domestic support for ICA and international support for ICA (culminating most obviously in the 1990s and 2000s with international tribunals and the creation of the ICC). Sikkink claims that these two simultaneous "streams" (domestic and international) contributed to global normative change (98). She explains the spread of the ICA norm from its origins in domestic legal practices and how it "diffused outwards and upwards through horizontal diffusion from one country to another and then via bottom-up vertical diffusion from individual countries to international organizations and international NGOs", culminating in the creation of the International Criminal Court (250). Her book concludes by examining the impact that the ICA norm might have on future human rights violations. Sikkink's work (2011) is ultimately an explanation of the emergence and growth of the ICA norm in the international arena.

The work that has developed from Sikkink's explanation of the "justice cascade" has branched in a number of related directions. Most pertinent for this dissertation is the recent research examining the mechanisms facilitating the manifestation of ICA trials in domestic legal contexts (Michel & Sikkink 2013). This dissertation contributes to this new line of research by analyzing what mechanisms can facilitate the emergence of domestic trials in the aftermath of civil wars where democratization is either ambiguous or non-existent.

Sikkink (2011) relies on a "life cycle" model to explain normative change at the international level (Finnemore & Sikkink 1998). The first stage of the life cycle model is norm emergence at the domestic level in which "norm entrepreneurs [meaning] agents having strong notions about appropriate or desirable behavior in their community" promote and work to persuade others of the appropriateness of their "framing" of certain political phenomena, at the domestic level (896).² Such "agents" might be political opposition actors, or employees of domestic or international human rights NGOs. Specifically, norm entrepreneurs in the case of ICA argue that human rights abuses by state actors should be open to criminal prosecution and that the traditional understanding which allows for state actor impunity, is no longer appropriate (ibid., 898).

The second stage of international normative change is characterized by a norm cascade, in which states and international organizations and institutions begin to adopt the norm through a "dynamic of imitation as the norm leaders [states] attempt to socialize other states to become norm followers" (895). This process of imitation would most likely occur among states that see themselves as similar – meaning that a state is more

² Snow et al. 1986, 464. Framing occurs when actors work to make "events or occurrences meaningful, frames function to organize and guide action, whether individual or collective."

susceptible to normative pressure when other states that are considered ideologically or culturally similar, are adopting the norm. The third stage of the norm life cycle is considered to be “norm internalization” in which the normative change becomes “taken for granted” by the majority of state and non-state actors (ibid). Finnemore and Sikkink mention that once the norm has moved past the first stage, it is even possible for specific countries to adopt the norm (through the logic of imitation), without substantial domestic support for the norm (896). This indicates that the spread of norms internationally does not necessarily equate ideological adoption of these ideas by populations on the ground but could simply be the consequence of change at the level of state actors. However, countries that do not identify with the larger group adopting normative change (for example, countries that are not actively seeking to demonstrate their democratic credentials), are less likely to adopt norm conforming behavior through the dynamic of imitation in the second stage.

The Spiral Model of Human Rights Change

Risse, Ropp & Sikkink further specify the process through which human rights norms impact domestic politics with the introduction of the “spiral model” (1999). This five-stage process explains the patterns in behavior among three levels of actors as human rights norms grow in strength at the international level: society, state, and international/transnational actors. The model is meant to explain how international human rights norms affect domestic politics, in effect, examining the question from the opposite perspective. Whereas Sikkink (2011) and Finnemore and Sikkink (1998) address growth of the movement internationally, the spiral model looks at the top down impact - from the international environment that supports human rights norms to domestic contexts. It

does recognize the importance of simultaneous pressure from above and below (Brysk 1993), but frames the question in terms of the larger system's effect on the local context. In the domestic realm, the spiral model begins with repression of opposition by state actors (the *Repression* stage) (1999, 22). Movement to the second stage occurs with what is referred to as "activation" of the international human rights network by local activists, meaning the provision of detailed information about the rights abuses on the ground to international and regional organizations that then publicize abuses and bring international condemnation on the repressive state in global venues and multilateral institutions. State actors respond by denial of the facts, or by challenging the appropriateness of international meddling in domestic affairs (*Denial* stage).

The third stage in the model is that of *Tactical Concessions*. This occurs as states are drawn more fully into the normative framework, pushed simultaneously by actors in the international realm and domestic opposition. Governments attempt to calm the mounting pressure through a mix of symbolic gestures and "cheap talk" which they believe will signal to the various parties that human rights are being addressed. For example, states' tactical concessions include the creation of domestic human rights organizations, or appointing ministers devoted to oversee human rights issues. The fourth stage begins as states respond more fully to pressure "from above" and "from below" and human rights norms begin to gain prescriptive status (Brysk 1993). This change from *Tactical Concessions* to *Prescriptive Status* entails the more complete integration of the human rights norms into domestic institutions, and discursive practices, such as through the adoption and ratification of international conventions (Risse, Ropp & Sikkink 1999, 20). Finally the most advanced stage of the spiral model results in *Rule Consistent*

Behavior by the state, in which domestic and international activity by states match the rules these actors have committed to. In this final stage, the language being used by state actors assumes respect for human rights and consistently provides justifications of actions in terms of these norms.³

Risse, Ropp & Sikkink (1998) understand this five-stage process to be one of state socialization into new international trends of behavior in relation to human rights violations (11). Through the progression of phases, specific relational dynamics of socialization characterize the government response to international and local pressures. In the first three stages, socialization is dominated by the logic of *instrumental adaptation* (5). States begin to recognize the various pressures that result from the inconsistency between their domestic human rights record and international normative change, and they begin to make changes where they believe it will not damage their sovereignty or require actual modification of practices. They make some concessions simply out of the hope that it will abate the growing pressure. This logic of instrumental adaptation persists through the third stage (*tactical concessions*).

In the later stages of the spiral model, the socialization process is characterized by new relational dynamics. In the *prescriptive status* phase governments engage in *argumentation, dialogue*, persuasion and debate with opposition figures (5). The change is detected through discursive practices in which governments “challenge the validity claims of the norm itself” and therefore render it more legitimate by engaging with the actors working to increase pressure (13). For example, governments will argue that they

³ This final stage was dealt with more critically in their 2013 second edition, but is beyond the scope of this paper.

“accept the validity of international human rights norms, but claim the alleged violations” either did not occur or should not be understood in terms of the norm, for various reasons (13). The shift from the first type of relational dynamics (instrumental adaptation), to the second (argumentation) occurs when state actors have begun to justify their actions in terms of human rights norms, revealing the influence of these new norms on their own thinking. At this point, it is unclear whether state actors believe what they are saying. However, knowledge of their motivations is not key. The leaders of the target regime have recognized that to successfully navigate the mounting pressure, they must enter into the conversation regarding human rights. States are therefore pulled into the normative logic and language in interactions with global actors (other states, INGOs, IOs etc.) and domestic opposition groups. Domestic legitimacy increases simply because the regime has begun to recognize their claims. When governments begin to enter into argumentation, it also becomes more difficult to claim that opposition groups supporting human rights norms are being funded or directed by foreign powers seeking to intervene in internal affairs (Risse, Ropp & Sikkink 1999, 27). Domestic pressure is legitimized by their rhetorical and substantive concessions.

The final two stages of the spiral model are motivated by socialization processes of *habitualization* and *institutionalization* in which more and more domestic actors recognize the validity of the norms and change their behavior to reflect this validity (17). Government officials at all levels increasingly adhere to the norms because it is the “normal thing to do” among their larger community of actors (16). Institutionalization moves states beyond the context in which certain powerful or influential individuals function in adherence to the norm (as examples or promoters of the norm), to a point at

which behaviors codified into institutions reflect the normative adherence that can now last beyond the moment of one norm adhering leader.

The spiral model seeks to explain the process by which human rights norms impact domestic contexts and therefore is heuristically useful for situating certain countries in terms of the impact of specific norms, like the ICA. I show here that according to the spiral model, Algeria and Turkey are both generally stuck in the *tactical concessions* phase.⁴ They exhibited surprisingly similar phenomena in terms of ICA until 2008, when domestic human rights trials emerged in Turkey, thereby shifting dynamics in that country such that the resemblance between the two nations ceased.

In chapters five and six, the presentation of my my empirical findings, I demonstrate that Algeria and Turkey are both stuck in the third phase (in which domestic grassroots support is key). Yet, the spiral model cannot explain why trials began to emerge in Turkey and did not in Algeria. In fact, it does not actually account for activity in lower courts,⁵ and therefore leaves us with an inadequate explanation of the most recent period in the two countries studied here.

Review of Literature Explaining the Emergence of Human Rights Trials

A variety of explanations address how human rights trials might emerge in domestic legal contexts. They can be roughly divided into two categories, according to their level of analysis: international or domestic. First, the emergence of domestic human

⁴ In the early 2000s it seemed that Turkey was moving into the the fourth phase of prescriptive status, when looking at human rights norms *broadly understood*. However, the analysis in chapter six demonstrates that concerning the ICA norm there has been no movement past the tactical concessions phase.

⁵ Given the content of the ICA norm, which emphasizes criminal responsibility, one should expect activity in the legal realm.

rights trials is sometimes explained by the role of transnational advocacy networks (TANs) – “committed and knowledgeable actors who work on specialized issues and promote causes and principled ideas and norms”, such as international and domestic NGOs (Diamond 1995; Keck & Sikkink, 1998: 8–9; Carothers 1999; Risse, Ropp & Sikkink 1999). These groups serve to “‘amplify’ the demands of domestic groups, pry open space for new issues, and then echo these demands back into the domestic arena” – a process called “the boomerang effect”, most common in human rights campaigns (Keck & Sikkink 1999, 99).

Sikkink’s work provides the most comprehensive theory about international normative change and the impact on domestic trials (Lutz & Sikkink 2001; Sikkink 2011). This normative change (which has occurred through TANs), represents a shift in conceptions of justice for human rights abuses from sole emphasis on state responsibility to a growing emphasis on individual criminal accountability (ICA) (Lutz & Sikkink 2001; Sikkink 2011). Through networks, normative ideas are spread and collective action is facilitated between the domestic, international and foreign levels. This has allowed for the diffusion of the ICA norm.⁶ However, as will be shown below, Algeria and Turkey have been impacted roughly to the same extent by the ICA norm and therefore, this explanation cannot account for domestic emergence of trials in Turkey, but their lack thereof in Algeria. Additionally, since the TAN literature focuses on change at an international level, it does not specify mechanisms that lead to trials at the domestic level

⁶ In this context, norms are considered to be “standards of appropriate behavior for actors with a given identity”, for example political, cultural or religious (Katzenstein 1996, 5; see also Strang 1991, 325; RohtArriaza 2002, 97; Sikkink & Walling, 2007).

and therefore cannot explain the divergence between the two domestic contexts examined here.

Other literature has pointed to related international level dynamics emphasizing the role of various connections to the international system that can create material pressure on authoritarian regimes and hook states into the larger processes of the boomerang effect, which are beyond their control. The most comprehensive overview of this theory is presented by Levitsky and Way who argue that a distinction should be made regarding the type of connections of a state to the international system (Levitsky & Way 2006, 382; 2010). First, “leverage” should be understood as the degree of external vulnerability to democratizing pressure from Western governments and institutions (2006, 379). For example, these entities can place punitive sanctions on rogue governments or, through positive conditionality, can promise rewards for good behavior. Leverage can be carried out through diplomacy, military force, or economic policies. A second type of connection is known as “linkage”, which can be understood as “the density of ties and cross boarder flows between the given country and the European Union, United States and Multilateral Institutions” (2006, 379). Five domains contribute to the overall level of linkage in a country: economic (“trade, investment, credit” and aid), geopolitical (“alliances, treaties and international organizations”), social (“migration, tourism, refugees and...diaspora communities”), communication (telecommunications, internet and western media “penetration”), [and] transnational civil society linkage (“western-based nongovernmental organizations, religious groups, and party organizations”) (2006, 383-4).

According to Levitsky and Way's model, Turkey would be considered to have moderate leverage and high linkage. Despite the fact that the country seems to have been strongly influenced by democratizing pressures (for example through the normative and identity aspects of the EU accession process, see Cizre 2001), it is nonetheless protected from this leverage pressure because of its strategic geopolitical position as 1) an important ally in the NATO block, 2) the gateway to Europe's immigration woes in the Middle East, and 3) a pillar of the international fight against terrorism.⁷ Turkey has high levels of linkage because of its extensive economic, social and communicative ties with Europe, and the United States.⁸ In Levitsky and Way's model, Algeria would be considered to have low leverage and moderate to low linkage, which are strongly influenced by its size, petrochemical resources and military and geopolitical significance in the War on Terror. Despite the fact that Algeria is connected to the United Nations Human Rights Commission through the country's ratification of the International Convention on Civil and Political Rights (ICCPR), there is little coercive capacity built into this institution to begin with resulting in minimal leverage (Smith 2007).

Levitksy and Way use this theory to predict movement toward democracy, stagnation in what they term "competitive authoritarianism", or movement toward full authoritarian rule (2006). Accordingly, Turkey should be moving toward democratization, as a country with high linkage. Algeria should be remain stably authoritarian. To put ICA trials in this theoretical context, we would expect trials in

⁷ These themes will be addressed throughout the text with particular attention paid to them in the concluding chapter.

⁸ Levitsky and Way's model actually predicts that a country with high linkage will move toward democratization "even where domestic conditions [are] highlight unfavorable" (2006, 389). Although Turkey seemed to demonstrate the success of their model until the mid 2000s, the country's increasing authoritarian nature makes this model less useful.

Turkey but not in Algeria. However, this theory cannot account for the fact that trials have emerged in Turkey during a period of increasing authoritarian policies (when, according to the model, one would expect a lower likelihood of trials). Levitsky and Way's model is inadequate to explain why Turkey and Algeria diverged in terms of individual criminal accountability starting in 2008.

Domestic Level Explanations of the Emergence of Human Rights Trials

In addition to the international level explanations, the right to private prosecution has been identified as conducive to domestic human rights trials (Michel & Sikkink 2013). Private prosecution occurs in countries that provide victims and NGOs the ability to advocate for victims' rights actively throughout court proceedings – mirroring public prosecutor advocacy of the state. This right was a major driving force in Latin American human rights trials of military officials, especially in Chile and Argentina, which have experienced a comparatively high number of prosecutions for human rights crimes (Michel & Sikkink 2013). Michel and Sikkink demonstrate that this right was a key causal mechanism for two reasons: it allows for the introduction of new arguments regarding international and regional human rights law, which were eventually relied upon in Supreme Court decisions (*ibid.*, 898); and second, private prosecution allowed victims, and NGOs representing them, to keep court cases open, even in the absence of political will to examine accusations against state actors (889). Private prosecution is fundamental because through it civil society actors can use the law to advocate for victims' rights. Algeria currently has private prosecution (although no trials), and Turkey does not have

private prosecution in lower level courts where trials have emerged.⁹ This theory is therefore irrelevant for explaining the divergence in these two cases starting in 2008.

Other research indicates that increases in judicial independence are linked to the opening of human rights trials. Skaar (2007; 2011) argues that the extent of domestic trials in a given country is directly related to the level of independence of the judiciary from the executive branch, in particular from the president. In her study comparing Uruguay with Argentina and Chile (2007), Skaar contends that where judicial reform has not occurred, judges are strongly influenced by the power of executive actors over their professional destiny, and unlikely to challenge the military's version of events through prosecutions. Judicial reform resulting in greater independence of judges from the executive can facilitate human rights trials since it creates greater protections for judicial actors. Those interested in pursuing prosecutions based on victims' complaints against state actors can do so with this increase in independence. My findings support this theory to the extent that changes in the independence of judges and prosecutors *from the military* seem to have contributed to their willingness to open cases on military officials in Turkey. However, as will be demonstrated in chapter six, brief changes in judicial independence from the executive (between 2010 and 2013) should actually be understood as anti-democratic and are further explained by the theory presented in this dissertation emphasizing shifts in elite power (in chapter 6).

Finally, legal mobilization is a key variable for the emergence of trials in domestic courts. First introduced by Zemans (1983), legal mobilization is the notion that when

⁹ As will be addressed below, Turkey has had private prosecution at the level of the Constitutional Court since 2010. Although three cases are currently before this court, this mechanism cannot explain how trials emerged in the lower court system 2 years before this right was provided at the Constitutional Court level.

victims have access to a variety of legal resources, they are able to advocate for and establish their rights as citizens through legal means (see also Burstein 1991; Epp 1996; McAdam, Tarrow & Tilly 1997; McCarthy & Zald 1977). Legal mobilization occurs when “civil society activists, with professional help from legal specialists, mobilize law on behalf of disadvantaged citizens and challenge discriminatory practices” (Tezcür 2009, 213; on the MENA region see also Moustafa 2003, 2007 and El- Ghobashy 2008). Legal mobilization has played an important role in the facilitation of domestic trials in Latin America (Michel & Sikkink 2013), and in initial legal activities that occurred in Turkey before 2008 (Tezcür 2009). In the more recent Turkish cases legal mobilization has been an essential contributing factor, but it has also been ongoing in both Algeria and Turkey since the 1990s, and therefore cannot explain the timing of trial emergence, nor their absence in Algeria. In fact, analysis of these two cases indicates that legal mobilization is a necessary but not sufficient factor in the emergence of domestic trials. However, changes in power in Turkey would not have resulted in trials in 2008 were it not for the presence of ongoing legal mobilization. Similarly, the legal mobilization in Algeria has not resulted in trials as there has been no substantive power shift among domestic elites.

To summarize, the literature proposes two types of explanations for the emergence of domestic human rights trials: those that explain change through the international level of analysis, and those that approach the topic through the domestic level of analysis. As I will show in this dissertation, none of these explanations on their own can explain the complex phenomena occurring in Algeria and Turkey since the early 2000s, and none of them provide a mechanism that adequately explains how trials began

to emerge in Turkey during a period of increasing authoritarian rule. Table 1 summarizes these theories.

Explaining the Onset of Trials in Turkey

In an effort to understand how Turkey moved from a context in which domestic trials were systematically rebuffed (mimicking the context in Algeria), to the opening of 15 human rights trials between 2008 and 2014, I argue for close attention to shifts in power among key elite actors. My main contention is that the redistribution of power that occurred in Turkey between 2002-2008 allowed for ongoing legal mobilization to impact lower level judicial actors in new ways, once the balance of power had undermined the military establishment. The shift in power indicated that breaching the status quo of impunity for military crimes would no longer result in professional punishment. The opportunity structure for lower level judicial actors (prosecutors and judges) therefore changed, and a number of trials began to be accepted in lower courts. A focus on the changes in power among elite actors helps to explain why despite the fact that Algeria and Turkey exhibited very similar characteristics on key variables, the two cases diverged at that time.

Methodological Approach

In order to effectively answer the two questions posed above, I analyze two types of data. First, I collected qualitative data through interviews conducted during fieldwork in Algeria and Turkey. These interviews focused primarily on the grassroots sector. I carried out more than 80 interviews with three sets of key actors identified in the previous

Table 1. Current Theories Providing Insight into the Emergence of Trials

Level of Analysis	Name	Expectations for Algeria & Turkey
International	Linkage and leverage producing material incentives	One would expect Turkey to develop further than Algeria in terms of movement on the spiral model given the stronger and more intricate links with the international community through the EU accession process and the ECtHR.
International	International norms and TAN activity	One would expect generally the same outcome for both cases in terms of ICA since they both are at approximately the same place in the spiral model (stalled at tactical concessions).
Domestic	Regime type	As a democracy with no amnesty law, one would expect Turkey to provide domestic legal recourse to victims. As an authoritarian regime, one would expect dramatically less domestic legal recourse for Algerian victims of abuses.
Domestic	Judicial independence	One would expect that Turkey's greater judicial independence to result in the facilitation of trials and Algeria's lack of judicial independence to result in significant obstacles to domestic trials.
Domestic	Private Prosecution	One would expect that in Algeria, where private prosecution exists, that domestic trials would have been facilitated. One would expect that in Turkey, where private prosecution does not exist at the lower instance level, trials would not have occurred.
Domestic	Legal Mobilization	One would expect that where legal mobilization is ongoing, that domestic trials would emerge.

literature as “norm entrepreneurs” (see Finnemore & Sikkink 1999): relatives of victims of human rights abuses, human rights activists, and legal professionals working with them to advocate for their rights. I conducted interviews in both countries, as well as participant observation in Algeria.

To understand normative change at the domestic level I also needed to somehow tap into key processes on the ground among government officials or state actors who are making changes at the institutional or discursive level. However, given the high level of risk associated with this topic, and trials directly targeting current and former state officials, it was not possible to carry out interviews with these types of actors. Therefore, as a window into the normative impact of ICA at the government level, I collected data through a careful reading of primary and secondary source documents that demonstrate the variation in regime response to human rights norms over the last two decades in both countries. The documents I examined included journalistic accounts of government official statements, policies and responses to the ongoing trials, official documentation provided by both governments to multilateral institutions (such as the European Court of Human Rights, the United Nations Working Group on Involuntary and Enforced Disappearances etc.), as well as analyses of the current and ongoing circumstances by research think tanks inside and outside of both countries.

Contributions to the Literature

This dissertation contributes to the literature in five ways. First, it documents and analyzes the impact of a specific human rights norm, that of individual criminal accountability. In this way it builds simultaneously on the work conducted by previous scholars documenting the impact of human rights norms more generally, and those who

have focused on the influence of the ICA norm at the international level. Second, my focus on domestic trials, as one element of the ICA norm is also important because it allows attention to detail regarding mechanisms facilitating a specific human rights norm (that of individual criminal accountability) in post-conflict situations.

Third, I specifically look at the influence of the ICA norm after civil wars for two reasons. Questions of justice for rights violations are likely just as pressing in these contexts as in democratizing transitions, but unlike the latter, post-conflict situations do not provide the ideological moment towards justice that sometimes can occur in transitional regimes. One therefore finds similar complexity of political phenomena with a wide variety of actors and interests. Examining the influence of the ICA norm in this type of situation allows us to question an even wider range of theories on the emergence of domestic trials. Additionally, these cases provide rich terrain for theorizing about the competing dynamics of conflicting norms such as ICA and those associated with the War on Terror.¹⁰ Focusing on civil wars allows for an in-depth exploration of situations that are ripe for spoiler activity, in which abuses have not clearly ended. Given that victims work within these uncertain contexts and have no assurance that they will improve in the near future, I analyze these cases to better understand the prospects for meaningful advancement of justice in the given situation. I look at how actors in non-democratizing cases grapple with the present normative context of the ICA norm – therefore furthering our understanding of the prospects for justice and truth (two major, recurring demands of families). The research presented here also points out that lower level political actors, particularly in the judiciary are important because of the nature of the ICA norm. As

¹⁰ This theme will be discussed at length in the concluding chapter.

opposed to the four levels examined by Risse Ropp & Sikkink, in which they specify the “domestic society” and the “national government”, my findings point to actors that could be considered in between these two levels, such as prosecutors and judges in lower courts (see 1999, 17-8). These findings indicate that in order to formulate effective theory regarding mechanisms that facilitate the integration of specific human rights norms at the domestic level, it is necessary to think through the content of the specific norm being examined and the related areas of society in which change could (or should) manifest.

Fourth, I have chosen to focus on cases from the Middle East North Africa region (MENA) specifically because Sikkink’s work maintains that the ICA norm is unlikely to impact this region (2011, 247-8). It is likely that Sikkink would maintain that her statement holds, and that we have not seen broad acceptance of the ICA norm at the state level. I do not contest this. However, while this is true, analysis of these cases actually helps to further specify the mechanisms at work in the manifestation of the ICA norm at the domestic level, and provides counter-intuitive insight into the relationship between regime type and the activities of the ICA norm. Namely, that we would see the emergence of domestic human rights trials in a context in which the regime is simultaneously becoming more authoritarian.

Finally, I contribute to the literature by providing qualitative data from two new cases. Sikkink’s original articulation of the justice cascade is a quantitative examination of the impacts of the norm at the international or global level, with historical analysis of four countries (Greece, Portugal, Argentina and the United States) (2011). The literature that has developed more recently on human rights trials has for the most part been

quantitative, examining the impact of trials and to some extent the determining factors that can facilitate trials (Olsen, Payne and Reiter 2010; Kim & Sikkink 2010, 2012; Sikkink & Kim 2013; Kim 2010, 2012;).¹¹ I contribute to a budding literature that examines the domestic impact of ICA in non-democratizing countries through in-depth qualitative case study research, based on six months of ethnographic¹² fieldwork in Algeria and Turkey. This methodological choice allows me to access a rich field of data regarding the intricate ways that normative change is playing out in everyday lives. I approached my fieldwork from the perspective of “comparative ethnography”, meaning “ethnographic research that explicitly and intentionally builds an argument through the analysis of two or more cases” helping “to enhance theoretical claims and efforts to make generalizable arguments” (Simmons & Smith 2015, 14-15).

Macdonald’s (2013) words, quoting Bendix’ research on global heritage regimes (2009) are particularly appropriate here: “only such micro approaches, in fact, can properly reveal the local specificity of” the global phenomena and “...[o]nly such approaches can show what notions such as ‘global heritage regime’ [or in the case of this dissertation, ‘the ICA norm’] might mean and how they might work in practice. The global is, after all, inevitably imagined and realized in particular, local worlds” (ibid.). Similarly, the international norm of ICA is being imagined and realized in the particular local worlds of human rights victims and their advocates, in Algeria and Turkey.

¹¹ For an exception to this see Michel & Sikkink 2013, which is discussed further in the context of the two cases here.

¹² See the methods chapter for an in-depth explanation of political ethnography employed in this dissertation.

Case Selection

Since the early 2000s Algeria and Turkey have seemed more different than similar, in a number of ways. For example, looking at Freedom House scores for the two countries in this period, Algeria maintained a stable overall score of 5.5 (not free) between 2001-2015. In contrast, Turkey placed at 4.5 (partly free) in 2001 and increased to 3.0 by 2005 (a stronger score still considered partly free), staying at that rating until 2013 when it was downgraded slightly to 3.5.¹³ The trends in this data are often summarized by labeling Algeria as an authoritarian regime, and Turkey as a semidemocratic government, or “conflicted democracy” (Ni Aoilin & Campbell 2005). However, since as early as 2011, when the AKP government carried out the Roboski/Uludere massacre, Turkey has been moving toward greater authoritarianism (Tezcur 2016, 7). I contend that the coup trials (2008-2013) which are addressed in chapter six, were an even earlier indication of authoritarian tendencies within the AK party.¹⁴ From this perspective, both Algeria and Turkey are interesting cases for the study of the emergence of trials since Algeria is authoritarian without trials, but Turkey is semidemocratic and becoming more authoritarian during the emergence of trials. Additionally, the history of their respective conflicts actually bring out other similar qualities. Until recently, they have both been governed by civilian leaders but ruled by military/security establishments (Cook 2007). They have both been touted as having

¹³ Freedom in the World tool: <https://freedomhouse.org/report/freedom-world/2013/turkey> Accessed May 15, 2016.

¹⁴ (“Timeline: What Happened in Roboski?”, in *Bianet English*, December 31, 2012, Accessed October 2, 2015, <http://bianet.org/english/human-rights/13200-timeline-what-happened-in-roboski>). The Roboski massacre occurred when the AKP led government bombed Kurdish civilians illegally crossing the Syrian Turkish border in December 2011. This event and the violent response to the Gezi protests in May 2013 can both be seen as harbingers of the authoritarian trend which has dramatically increased in 2015-2016 (Tezcür 2016, 7).

experienced a push by the civilian government since the early 2000s to weaken the military establishment (Roberts 2007; Tlemçani 2008; Le Sueur 2010; Aydinli 2012, 103; Gürsoy 2012); they are both seen as important members of the international antiterrorism alliance that has developed in the post September 11th international context, having fought internal insurgencies for extended periods of time and because they are geopolitically located in strategic areas regarding the ongoing War on Terror; similar types of human rights crimes were carried out by state agents during the fight against these insurgencies; and, as I will demonstrate below, they are both at roughly the same stage of the spiral model concerning the impact of the ICA norm. Despite these similarities, the two countries experienced different trajectories in terms of the dependent variable (domestic human rights trials).

It is particularly important that both Algeria and Turkey experienced similar types of political violence during roughly the same time periods. Both Algerian and Turkish (Kurdish) populations experienced the height of violence during the 1990s, which then died down by the end of the decade (Cavatorta 2009; Martinez 2000; Tezcür 2014, 2015; Marcus 2007).¹⁵ This means that the two countries have had roughly the same amount of time from the extreme violence of the mid 1990s for the ICA norm to develop domestically in relation to human rights abuses committed during that time. Both conflicts were based on insurgencies fighting the state military, and within this larger conflict, military forces utilized a tactic known as enforced disappearance. Enforced disappearance is defined in international law as occurring in cases where

“persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different

¹⁵ Turkish Kurdish populations in the South East were the target of the military campaign in the 1990s.

branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law” (International Convention for the Protection of All Persons Against Enforced Disappearance, 2006).

This tactic has been used as a tool of military regimes since at least World War II, but gained particular attention in Latin American countries between the 1960s and the 1980s. Guatemala, Honduras, Argentina and Chile are among the most extreme cases (Dewhirst & Kapur 2015, 13). Enforced disappearances have been documented by the United Nations Working Group on Involuntary and Enforced Disappearances (WGIED hereafter) in eighty-eight countries between 1980 and 2014 and the group is currently reviewing over 43,500 cases of enforced disappearances in over 80 countries (United Nations Working Group 2014, 1).

Enforced disappearances have played an important role in the development of mechanisms to deal with individual criminal accountability, at the regional and international levels (see Kovras, forthcoming). The first cases that were heard through the individual petition process before the United Nations Human Rights Committee (UNHRC hereafter) (in the 1970s) dealt with enforced disappearances in Uruguay, and the regional Inter American Court of Human Rights’ inaugural case examined the crime in Honduras (IACHR hereafter)(Dewhirst & Kapur 2015). The European Court of Human Rights (ECtHR) has also, similar to the UNHRC and the IACHR, developed extensive case law in relation to enforced disappearances (Kyriakou 2012). These courts do not rule on individual criminal accountability, but they recommend (to varying

degrees¹⁶) full investigation and prosecution of those responsible, and often collect evidence that can lead to domestic prosecution.

Enforced disappearances have also shaped the development of the human rights and transitional justice movements (Clark 2001; Arthur 2009), and waves of activists who have participated in processes of norm transmission and normative change (Keck & Sikkink 1998; Clark 2001). Additionally, the International Criminal Court was created in 2002, established through the Rome Statute (1998, came into force in 2002), and is based on ICA at the international level. The court explicitly recognized enforced disappearances as one of a number of crimes against humanity over which the court has jurisdiction (Rome Statute 1998, 4).

In short, disappearances have been linked historically to the larger movement that has propelled individual criminal accountability to the forefront of transitional justice and post conflict work today. By choosing cases that include this specific human rights violation, I am focusing on a crime that the literature suggests has been linked to development of the ICA norm. Additionally, choosing countries with the same type of rights violations, during the same time period, increases the likelihood that domestic groups in these two countries have been exposed to similar responses from international and regional organizations, and the international community more generally, promoting the ICA norm.

Finally, Algeria and Turkey are worth examining in comparative analysis because domestic legislation and political activity regarding individual criminal accountability for enforced disappearances has been different in the two countries, helping to explain the

¹⁶ See Kyriakou 2012 for an extended discussion of this point.

presence of trials in one country and their absence in the other. A series of fifteen human rights trials examining questions of individual criminal accountability have been initiated in Turkey since 2008. My analysis demonstrates that these trials should not be confused with show trials, which I will demonstrate in the coming pages. In contrast, in 2005 Algeria passed amnesty legislation barring prosecution of state agents and insurgents for crimes committed during the civil war. No trials for human rights abuses have occurred in Algeria.

According to the criteria mentioned above, other cases that could have been chosen are Lebanon, Syria, Tunisia, Iraq or Indonesia. Turkey and Algeria are most useful for a comparative analysis for a number of reasons. Although Lebanon experienced extensive enforced disappearances during its civil war from the 1970s to the 1990s, it is too dissimilar in that it has a very weak government (as opposed to Algeria and Turkey's strong governmental capacities), and disappearances were carried out by a variety of different groups (as opposed to the relatively simple two sided conflicts that occurred in Algeria and Turkey). Also, no ICA trials have occurred in Lebanon, despite its semi-democratic status.

Syrians have experienced enforced disappearances "on a systematic and nearly daily basis" including at least 58,148 cases since the beginning of the civil war in 2011 (Amnesty International 2015, 6-7), but these crimes are ongoing in the midst of the terrible violence that grips that country and therefore outside of the scope of possible cases for current analysis. Iraq is similarly inaccessible at this time for this topic. In Tunisia, enforced disappearances did occur during the Ben Ali regime and are just

beginning to be examined by the UNHRC in March 2016 (UNHRC).¹⁷ However, Tunisia does not fit with the conflict profile of the other two cases since there was not extensive violence for any period of time in the 1990s in relation to an insurgency.

Finally, Indonesia is an important case (because enforced disappearances and some trials have occurred), but these violations have been drawn out over multiple regimes, carried out by multiple actors over the last fifty years (Asian Legal Resource Center).¹⁸ In this way it is not as useful of a comparison to Algeria and Turkey, simply because the crimes have occurred over a longer period of time, with a wider number of actors and greater complexity of surrounding events.

Outline

The remainder of the dissertation is composed of six additional chapters. Chapter two presents an overview and justification of the methods used to answer my two questions. Chapter three presents my use of the spiral model theory to review the state of both cases in terms of the ICA norm, and then moves on to an explanation of my main theoretical contribution: I argue that the mechanism that can explain the divergence of the two cases starting in 2008 is redistribution of power to new elite actors, and its impact on “legal mobilization” (Zemans 1983; see also Michel & Sikkink 2013; Tezcür 2009) through the legal complex (Karpik & Halliday 2011). Chapter four presents a description of the background on the two case studies including the conflicts in which enforced disappearances occurred in each country, respectively.

¹⁷ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17129&LangID=E> Accessed May 16, 2016.

¹⁸ <http://www.humanrights.asia/news/alrc-news/human-rights-council/hrc30/ALRC-CWS-005-2015> Accessed May 16, 2016.

Chapters five and six present my empirical findings. First, I demonstrate where Algeria sits in terms of the spiral model when applied to the ICA among grassroots actors, and the state of the country in terms of the major variables in the literature that explain advancement in terms of domestic trials.

Chapter six mirror the previous chapter's layout in that it spells out where Turkey can be found in terms of the spiral model at the time the trials started in 2008. It also provides evidence that support for the ICA norm among key grassroots groups is approximately the same as the level in Algeria (according to the spiral model). Then, the chapter presents the domestic trial activity ongoing in Turkey since 2008, and the theoretical argument that the balance of power among competing elite actors in each country must be taken into account to understand the divergence between the Algerian and Turkish cases since that time. Finally, chapter seven provides a comparative analysis of how well the literature can explain the two cases, and a discussion of the larger impact of the findings presented here.

CHAPTER TWO

METHODS OF DATA COLLECTION AND ANALYSIS

This dissertation is a qualitative comparative case study, based on political ethnography. The analysis presented here works from three different types of data: data collected in semi-structured interviews, data from participant observation, and data culled from primary and secondary source documents relating to the context of post-conflict justice in Turkey and Algeria. This chapter will begin with an explanation of my relationship to the two field sites. It will then provide an outline of what political ethnography entails and an explanation of the foundations that underpin the approach used here. Next, I outline the type of data collected and how it was analyzed to answer the two main questions at the heart of this research. Finally, the chapter closes with a discussion of how these methodological choices impacted the type of data I collected and its relation to how I am able to answer these questions.

Comparison of Prior Relationship to Field Sites

The two research settings chosen for this dissertation were different in a number of ways, primarily in the previous relationship that I had developed with the research locations. I have been traveling to Algeria habitually since 2007, as I am married into an Algerian family. My in-laws live in Oran, the second largest city in Algeria, and I have traveled habitually in western Algeria (between Algiers and the Moroccan border). My experience in the country has been primarily within family oriented social relation within the context of an upper-middle class household that identifies as predominantly Arab, but

with Berber family on both sides. Familial relations within Algerian social norms include extensive relationship networking among extended family and friends, among multiple generations. This provided me with a strong background in social norms that govern relations within this sector of the Algerian population, as well as a developed ability to identify cues of importance relating to social class, regional affiliation, religious practice, education level and political involvement.

Finally, as the daughter-in-law in an Algerian family, I have grown accustomed to carrying out the daily activities normally associated with younger women within the family structure (e.g. preparing tea and coffee, welcoming guests, participating in conversation, knowing what social cues indicate levels of authority among different people within a group and how to appropriately respond to those cues). This helped me as I was carrying out my participant observation work because many of the families who come to the associations representing the disappeared include elderly individuals. I found that I was easily able to fit into social relations around these people and I believe this helped me develop higher quality rapport, more quickly than had I not had this previous experience. Additionally, I am fluent in French, which is spoken ubiquitously (although by no means in a uniform manner) in big cities of Algeria. Having studied modern standard Arabic and engaging in many social contexts dominated by Algerian Arabic over the last ten years, I was also able to use these language skills to pick up some of what was said around me in Arabic. This allowed me to further pursue questions of interest during interviews based at times on what was being said in Arabic.

During my stay I traveled back and forth between Algiers and Oran, the two main sites of my research (by train or private car). In Algiers I lived in an apartment in the

Telemly neighborhood which is in central Algiers, and within walking distance of the location of *SOS Disapru(e)s*, the organization representing families of the disappeared which was my main site. When in Oran, I lived with my extended family and traveled by tram to the downtown area of the city (where the second *SOS Disapru(e)s* office is located, or occasionally to homes of families, where I carried out my research.

I thought initially that the family relations I had previously developed in Algeria might be helpful in contacting families of the disappeared outside of the associations representing them. This was not the case. As seems to be typical for families who have not been directly affected by the disappearances, my immediate family was reluctant about people knowing my topic of research. My experience led me to believe that in general, if someone did know people who have been impacted by the disappearances, they were unwilling to share that information with me. In fact, it seems now that being socially embedded in a family relationship context actually made my work slightly more difficult in Algeria, because of the fear that accompanied the social taboos associated with my topic, as well as the desire on the part of my closest family members to keep rumors and gossip to a minimum (among extended family as much as among friends or acquaintances).

Additionally, since I had been somewhat vague about my research topic in my visa request, I was unsure whether carrying out interviews with the associations could (if it became apparent to authorities) result in any social or material problems for my family. In sum, the cultural knowledge I had gained from my experience as a family member *was* helpful once I was interacting with families and in the association. However, the constraints that accompanied these extensive social ties were stressful for me as I was

carrying out my research, and contributed to a reticence on my part to venture as independently as I was able to in Turkey.

My experience in Turkey was different than that in Algeria. I had spent no prior time there, but had been in contact with human rights organizations remotely before arriving, and had been in contact with a Turkish master's student based in Istanbul who agreed to help as my interpreter during my fieldwork. During my stay, I lived in an apartment in the *Beyoglu* neighborhood of the European side of Istanbul, close to the central tourist area of *Istiklal*. *Istiklal* is the location of many of the human rights association offices and not far from the office of the association representing relatives of the disappeared, *Yakay-Der*. When in Diyarbakir for three days, I stayed with a Kurdish family, not far from the old city and traveled with an interpreter from the region. There I met and interviewed two human rights activists, as well as a member of the Diyarbakir bar association, who had participated in trials. The trip to Diyarbakir was also a very formative experience in that it provided me with a rich experiential collection of information about Kurdish life, the larger struggle for Kurdish rights, and the importance of Diyarbakir and local politics and culture to my topic. I sensed that it was also important to many of the individuals I was interviewing in Istanbul (who encouraged me often to go to the southeast and "see for myself"), who seemed to take it as an indication (however slight), that I was serious about my research and understanding the larger context of the trials.

I recognize that, had I a familial connection in Turkey, the particular political leanings of those relations could have easily colored my sense of safety while carrying out my work. Given my lack of family ties in Turkey, I was able to make decisions about

my research without the cloud of anxiety that affected my ability to branch out to other sources in Algeria. My sensibilities about safety and travel in the two countries may also be related to the regime type and my visa status. Algeria is under authoritarian rule with higher levels of corruption (Transparency International 2015)¹ and higher violent crime rates than in Turkey. Furthermore, the discrepancies between crimes recorded by local law enforcement and those recorded by the World Health Organization are higher in Algeria than in Turkey, indicating a greater lack of oversight by domestic actors in Algeria (Harrendorf, Heiskanen and Malby 2010, 11-14). Additionally, the same military regime is currently in power that carried out the extensive violence I have been studying for this dissertation (although in a slightly more obscured form than during the civil war period because of the resumption of civilian governance). Finally, there were only three other western academics or journalists that I crossed during my time with the human rights associations in Algeria (making my presence obvious to locals). In contrast, in Turkey, there has been a clear shift in power. In Turkey, as a United States citizen, I was allowed to stay in the country for 90 days with a simple entry tourist visa that one can buy at the airport. Furthermore, Istanbul was crawling with foreign and domestic journalists and academics, and therefore my activity was much less likely to attract the attention of authorities.

Political Ethnography

Political ethnography is the use of anthropologically inspired fieldwork methods based on immersion in a political context, to study questions of political importance (see

¹ The Transparency International website allows for a state comparison of 2015 corruption perceptions by country. Algeria received 36 out of 100 (100 being corruption free) and Turkey received 42. <https://www.transparency.org/country/#TUR>

Schatz 2009 and Joseph, Mahler and Auyero 2007). Following this tradition, I lived at each of my field sites for approximately three months, respectively.² Ethnographic methods, as understood in political science, have often been equated with the term “thick description.”³ Thick description is a major part of what anthropologists, and political scientists following this methodological practice, *do* in the field. The goal is to observe, note down, and generally document in great detail as much possible information regarding the circumstances of study. This process includes personal observation of what is going on in the daily activities of subjects and in the location of research, intensive interrogation of those subjects and other sources of information regarding the subject of study (Tilly 2007, 409). This type of data collection is important because it allows the researcher to gather a wealth of contextual information about the meaning of relations amongst actors, and between actors regarding social phenomena. The variety of information can then be used to better understand the value of these social phenomena for those involved in them – what Geertz refers to as the process of determining what “other people...and their compatriots are up to” (9). Perhaps the most simple but illustrative example given by Geertz (drawing from the original idea by Ryle), is the difference between thin and thick description of a wink:

“between what Ryle calls the ‘thin description’ of what the [person]...is doing (‘rapidly contracting his right eyelids’) and the ‘thick description’ of what he is doing (‘practicing a burlesque of a friend faking a wink to deceive an innocent into thinking a conspiracy is in motion’) lies the object of ethnography: a stratified hierarchy of meaningful structures in terms of which twitches, winks, fake winks, parodies, [and] rehearsals of

² The norm for fieldwork stays in the anthropological tradition is longer than within the political science tradition that has been inspired by anthropological approaches.

³ The term comes from the title of his introductory essay to his 1973 book “Thick Description: Toward an Interpretive Theory of Culture”, which borrowed the idea from Gilbert Ryle’s *Concept of the Mind* (1949).

parodies, are produced, perceived, and interpreted, and without which they would not...in fact exist, no matter what anyone did or didn't do with his eyelids" (Geertz 1973, 7).

This description reveals how the inclusion of information regarding the social interaction surrounding specific actions can shed light on the meaning that the given activity maintains among the subjects of study. The ethnographic method of data collection impacts the type of data collected. Like other forms of qualitative data collection, it includes the documentation of what is going on: for example, a man reports that a third party is no longer living. In ethnographic research, the researcher adds to that data (about what is occurring) other contextual information that can possibly help untangle the meaning conveyed by the events to those participating. For example, information such as: the man is speaking about the individual responsible for the disappearance of his son; he looks directly at the interviewer when saying (with greater certainty than at any other time in the interview) "they are dead"; there is a certain air of satisfaction in his statement; the woman sitting next to him looks briefly at the interviewer and then looks at the floor, obviously flustered by his statement; the interviewer immediately wonders whether the man is saying that he knows they are dead because *he* made sure of it. This *extra* information, gathered through immersion in the political context, is what makes the data collection in ethnography different than other qualitative methods. In the words of Tilly, when we believe that politics "actually consists...of dynamic, contingent interactions among persons, households and small groups, political ethnography provides privileged access to its processes, causes and effects" (2007, 410).

According to Geertz, this approach is meant "to aid us in gaining access to the conceptual world in which our subjects live so that we can, in some extended sense of the

term, converse with them” (24). My goal was to converse with my subjects of study about their understandings of justice for human rights violations. The ethnographic method allowed me to converse in this manner, over longer-term interactions through which I got to know my subjects and they came to know me. Other qualitative methods (such as the use of interviews outside of an immersive experience) do not allow for iterative communication over time. The ethnographic method helped me to better go about my work – to more “intelligibly...describe” social events, behaviors, institutions and processes, because of the depth and variety of knowledge I was able to establish regarding my two case studies.

I do draw on ethnographic data to determine whether the current theories about the onset of trials (international and domestic, outlined above) explain the two cases here. To be more specific, to answer the broader question of what impact the ICA norm has had on civil war cases, I collected data that focused on the conceptions of justice regarding enforced disappearances from the 1990s that are embraced by local actors in Algeria and Turkey.⁴ Specifically, I collected data on the language used by those I interviewed, in the published, printed, and video materials used by the organizations. The conceptions of justice conveyed in interactions among my subjects, and through objects that they use habitually in their work with these organizations (e.g., banners, signs, poems written by relatives and used by the organizations).

The varied meanings people in each of these countries attach to justice do not lead to certain causal outcomes (trials or no trials). In other words, I do not argue that the

⁴ The reasons for this choice of interview subjects are outlined in greater detail in the third chapter which presents my theoretical framework.

meanings attributed to justice in Algeria and Turkey are different and have resulted in different legal activity.⁵ My comparative analysis of the contested meaning of justice helps me to pinpoint the level that the ICA norm is at in the two countries according to the spiral model (and comparing the two sets of data leads to the conclusion that the ICA norm could not have caused the trials). Additionally, the variety of information gathered through ethnographic research allowed me to determine the validity of other explanations for the emergence of trials in Turkey, but lack thereof in Algeria (such as changes in judicial independence, private prosecution rights, legal mobilization and changes in elite power).

The Process of Data Collection

The interview data from both countries came from semi-structured in-depth interviews with three different groups of people: relatives of victims of enforced disappearances and extrajudicial killings, human rights activists advocating for these families in local organizations, and legal professionals working in the human rights associations or in conjunction with them, to advocate for victims' rights through legal methods. I carried out a total of forty-two interviews in Algeria and forty-one in Turkey. My interviews were carried out focusing on three sets of individuals: relatives of victims of enforced disappearances (28 in Algeria and 17 in Turkey), as well as human rights activists (11 in Algeria and 12 in Turkey) and legal professionals advocating for them domestically (3 in Algeria and 12 in Turkey). The choice to interview these three categories of individuals, and not others, was based on the constraints I faced in the field in relation to my topic. In a perfect context, the two questions I was examining would be

⁵ Nor do I argue that everyone in each country has the same of idea of what constitutes "justice".

most fully answered through data collected from interviews with actors at three different levels: 1) domestic civil society 2) actors working in the judiciary, and 3) actors working in the executive branches of both countries' governments. This would have allowed me to speak directly to the experiences and interpretations of all three levels of actors who may be impacted by the ICA norm, and who could be responsible for the emergence of domestic trials or for inhibiting their emergence. However, given the fact that my focus is on the fluctuations in appropriateness of prosecuting powerful political actors, whose responsibility for human rights crimes is still very contested, it would have been indisputably risky to attempt to directly interview government officials in either country. Instead, I sought to fill this gap through the analysis of primary and secondary source documents on my topic that help paint a picture of these officials' responses to ICA claims, internationally and domestically.

I spent a little over three months in Algeria, from September to November. My main locations were in Algiers and Oran (the two largest cities of the country), although I also traveled to Blida, just south of the capital. I had made initial contact with human rights organizations representing families in both countries, before leaving for fieldwork, and had acquired permission from them to interview those working in their organization as well as families that they represent once I was in the country. I left for fieldwork planning to interview actors in the civil society domain and perhaps in government. Once in the field, I had to readjust my expectations and strategies in a number of ways given the constraints that became apparent after my arrival and shifting factors over the course of my fieldwork. Table 2 lists the types of interviews carried out in both countries.

Table 2. Interviews by Organization

Algeria	Organization Name and Type	Total # of Interviews	Relatives	Activists	Legal Professionals
	SOS Disapru(e) (human rights)	39	28	11	0
	Djazairouna (human rights)	3	0	1	2
	Somoud	1	0	0	1
Total		42	28	11	3
Turkey	Organization Name and Type	Total # of Interviews	Relatives	Activists	Legal Professionals
	Yakay-Der	15	14	0	1
	Hafiza Merkezi	7	0	3	4
	Mazlum-Der	3	0	3	0
	IHD	7	3	2	2
	TESEV	1	0	1	0
	Peace Mothers	2	0	2	0
	Diyarbakir Bar Association	1	0	0	1
	TIHV	1	0	1	0
	Non-affiliated legal professionals	4	0	0	4
Total		41	17	12	12

As an example of how on-the-ground learning impacted my research strategy, before spending time in Turkey and learning in-depth about the processes that have led to cases being recently opened up, it was not immediately apparent that prosecutors and

judges in the lower courts were possibly working independently from higher government direction, nor that the introduction of domestic trials depends so heavily on the decisions of lower court prosecutors and justices. In other words, it was only once I was in the field, that it slowly became apparent that the decision to open or not open domestic trials based on cases filed by victims' families rests on the choices of prosecutors and judges. This awareness caused me to seek out more information about the domestic legal structure in Turkey, and the processes surrounding these cases, particularly concerning what elements affect the latitude that judges and prosecutors have when making these decisions to open (or not open) cases, and which actors in the legal structure control the professional destiny of prosecutors and judges. I attempted to contact prosecutors and judges who had been associated with these trials, but was generally unable to make contact during the remainder of my stay.⁶ In short, this discovery through experience in the field caused me to take more seriously the political constraints on key actors and their fluctuations in the last decade and a half.

Additionally, since most of the trials are not taking place in Istanbul (where the human rights organizations were most plentiful and those that I had previously contacted were located), my access to prosecutors and judges, as well as some of the lawyers working directly on the trials, was limited. I was able to spend three days in Diyarbakir, during which time I met with one of the main lawyers in two of the trials who is associated with the Diyarbakir bar association. This allowed me to gather important details regarding the trials and the larger context in which the disappearances took place.

⁶ At the very end of my stay in Turkey I was able to connect with and interview one former military judge, who was quite familiar with the human rights cases. Interview material from that source was confirming of my general findings presented in this dissertation.

I had no access to judges or prosecutors in Algeria. This was the case for two main reasons. First, as explained in greater detail in chapter four, in Algeria it is (since 2005) illegal to prosecute anyone for crimes carried out during the period of terrorism (whether they are former insurgents or state actors) and even speaking about it publically or in print carries a heavy fine and the possibility of prison. Although conversation about individual criminal accountability occurs ubiquitously among members of the associations representing families, sometimes in the press, and definitely on social media platforms, it remains technically illegal. For this reason, I could not simply contact prosecutors and judges out of the blue to ask questions on this topic, nether did I want to draw attention to myself among individuals who I do not know. Algeria has had no trials for human rights abuses, even before the amnesty law was passed in 2006⁷, and therefore there is no indication of which judges or prosecutors might be open to answering questions about individual criminal accountability for these crimes.⁸ Additionally, from my interviews and participant observation with the human rights organizations, as well as a careful reading of the local news, and ongoing monitoring of current academic blogs on

⁷ There were some trials in domestic courts of insurgents for crimes of terrorism, generally conceptualized as crimes against society and the state (not human rights violations), but even the sentences resulting from these prosecutions were subsequently overturned by the amnesty law. There is a distinction within the amnesty law between those who should not be covered by it because they committed bombings of public places, massacres and or rape. In reality, no distinction of this kind was made, neither among those released from prison after sentencing, nor among those who reintegrated into society directly from the insurgency when they returned from the mountains.

⁸ I was able to make contact with one legal professional who is representing Algerians in cases related to human rights (other than in relation to the period of terrorism) in domestic Algerian courts. For example, this lawyers has represented victims on questions of asylum status for refugees, and the right to healthy and safe work conditions. This was one of two domestic lawyers who work independently, but in coordination, with the organizations representing families. This provides an indication of the weakness of ties between civil society organizations advocating human rights and legal professionals in the country – a topic which I return to in chapter five in relation to the “legal complex” (Karpik & Halliday 2010).

Algeria, I found no indication that lower level judicial actors in Algeria are working independently from the executive-military establishment.⁹

In addition to the fortuitous fieldwork-gained information that shifted my attention to the constraints on judges and prosecutors in Turkey, I also encountered unanticipated logistical challenges in the field that resulted in alterations in my anticipated data collection. In Algeria, I had initially planned to carry out interviews with organizations representing victims of all types from the civil war (similar to as I did in Turkey). My initial research before going into the field allowed me to connect with the organization representing relatives of people disappeared by government forces, *SOS Disparu(e)s* also known as *le Collectif des Familles des Disparu(e)s en Algérie* (CFDA). I had also contacted two other organizations representing different groups of victims, although I was unable to include either group to the extent that I originally planned, for different reasons. The organization known as *Djazairouna*, represents people who identify as relatives of “victims of terrorism” meaning relatives of those who had been killed by members of the diverse insurgent forces fighting the government, who used terror tactics such as kidnapping and executions. This organization is located in Blida, about an hour and a half drive from Algiers, one of my two main locations in Algeria (the other was the second largest city in the country, Oran). I had initially planned to make three to five day trips to that site, in order to interview families and activists. However, once I was in Algeria I did not hear back from the organizer of that association for about a month, and I therefore focused on my other interviews.

⁹ The only movement independent from the status quo supporting amnesty in recent months has actually, surprisingly, come from high level military officials, as well as foreign courts. These developments are discussed in chapters five and seven.

Additionally, three weeks after my arrival in Algeria, *Jund al Khalifa* (an armed militant group) kidnapped and beheaded a French tourist, Hervé Gourdel while he was hiking with Algerian guides in Tizi Ouzou (about an hour and forty minutes from Algiers). The event ended up being an isolated instance, but nonetheless, made me wary of traveling alone in the region, particularly because he was with local guides (marking the unusual nature of the event). I waited to see how things developed and toward the end of my stay I traveled to Blida once and interviewed three members of *Djazairouna*.

Finally, another event altered my plans for interviews at a third organization representing victims of human rights abuses during the war. This association called *Somoud* also advocates for all relatives of “victims of terrorism”, but specifically works with those whose loved ones were kidnapped by insurgents. These families differ from the category of families represented by *Djazairouna* in that, like victims of enforced disappearances¹⁰, in these cases, there is no body found, nor grave identified with the remains of the victim. Unfortunately, despite the fact that the organization still identifies with the movement for justice in Algeria, and the organizational leader did meet with me and allow me to interview him, *Somoud* has become defunct as an organization. This was partly due to the death of its intellectual and inspirational leader (two years ago), and also due to the fact that because of certain legal details, these family’s habitual legal problems have been resolved to a greater extent than those of the other two categories of victims (although not necessarily to anyone’s satisfaction) (Interview #26).

The end result was that rather than focusing my attention on the three different groups in Algeria, I carried out the majority of my interviews with *SOS Disapru(e)s* and

¹⁰ In accordance with international law, I am strictly using this word to refer to individuals who were taken by government actors, or those working with the express approval of government actors.

supplemented with additional interviews from the other two organizations. In order to collect a richer data regarding the circumstances in Algeria, I decided to also carry out participant observation at the *SOS Disparu(e)s* organization offices in Algiers and Oran.

By participant observation, I mean that I participated “in the daily life of the people under study...openly in the role of researcher...observing things that happen, listening to what is said, and questioning people, over some length of time” and carefully documenting these observations (Becker and Geer 1957, 28). This type of qualitative methodology is useful for a number of reasons. First, participant observation can allow the researcher to double check and verify the meaning of information, statements or even specific words used by individuals in interviews (ibid 29). Second, it can help to clarify vague statements made by subjects in interviews that were impossible to tease out through the interview process. The opacity of some topics may be a direct result of the fact that a subject has not spent much time thinking about the issue, or even that they are in the process of change regarding the issue and therefore it becomes more difficult to tease out what is actually going on (30). In these cases “immediate observation of the scene itself and data from previous observation enable the participant observer to make direct use of whatever hints the informant supplies” (30). Furthermore, it allows for the researcher to compare and contrast between statements made in interviews and other surrounding social interactions and statements in further conversation or habitual social relations. In this way, participant observation can help pinpoint when certain statements made in interviews may clash with the reality observed by the researcher, and helps the researcher think through what those inconsistencies indicate about the perspective of the subjects (31). In sum, participant observation is useful as it helps the researcher to

construct “an ever growing fund of impressions, many of them at the subliminal level, which give him an extensive base for the interpretation and analytic use of any particular datum” (32).

My participant observation entailed spending the work day at the offices of *SOS Disparu(e)s*, either in Algiers or Oran. The Algiers office serves as their central headquarters, with the main activists who started the organization still in charge. They are also directly linked to and managing the activities of the third office, which is located in Paris. The Algiers office also receives foreign guests, mostly from human rights organizations and transnational associations (such as Amnesty International, Human Rights Watch, representatives from the UN Working Group on Involuntary and Enforced Disappearances etc.), as well as foreign academics and experts who come to provide workshops to the activists.¹¹ The office in Oran has a more sleepy quality to it. The staff is younger, with higher turnover. As of now, there is less contact with relatives of the disappeared, and more focus on educating the public and spreading information about human rights in general. The Oran office also houses the newly opened *Centre de Recherche pour la Préservation de la Mémoire et l’Étude des droits de l’Homme* (CPMDH, Center for Research, the Preservation of Memory and the Study of Human Rights), which is a growing library on these topics. Open to the public, it also serves as a venue to host events on diverse aspects of human rights in Algeria. The Oran office gave me greater access to the younger generation of activists, many of whom are in their early 20s, and the goals of growth and dissemination of information to the wider Algerian

¹¹ The association has received experts from Latin America who have provided initial training on DNA databases and collection of forensic data for identification of remains. There are also a number of legal experts and academics who have presented on their own areas of expertise.

population. The Algiers office served in many ways as a window into the history of the organization, and its relations with the international and regional networks that have been built up over the last twenty years.

Whichever office I was focused on, I would arrive in the morning when they opened, spend time working there with the human rights activists, talking with them and relatives and other people who would come to the office, observing their activities, learning about what they do on a day to day basis, and comparing between the two city offices, as well as with my experience in Turkey.¹² Some days I had interviews scheduled with relatives or activists.

I carried out the vast majority of my interviews in Algeria at the offices of the aforementioned organizations. This was the strategy proposed by the organizations and relatives and activists were comfortable and habitually coming to those locations, making my interviews easier. I did travel to the homes of three relatives of the disappeared in Oran, to carry out interviews, since they were unable to leave their homes.

My interviews were carried out for the most part in French.¹³ All of the activists and legal professionals spoke French comfortably. Many of the relatives of the disappeared also spoke French and would answer my questions in French, however, a good portion of my interviews were carried out with an activist from the organization who served as an interpreter (from Algerian Arabic or Amazigh). Working with an interpreter from the organization limited the likelihood that interviewees would feel

¹² I spent a little over two months in Algeria, then spent three months in Turkey, and then spent almost a month back in Algeria, before returning to the states.

¹³ I am fluent in French speaking, reading and writing. I have an advanced understanding of modern standard Arabic, which heavily informs Algerian Arabic dialect and have spent extensive time listening to and learning Algerian dialect.

reticent about answering my questions honestly. The three interviews I carried out in Blida were conducted in French, with the help of a personal friend who served as an interpreter for certain phrases used in Arabic. I had not spent any time with these interviewees ahead of time and therefore was unable to develop any extensive rapport. Since the subjects of these interviews knew neither myself nor my friend, it is possible that they were less forthcoming and answering my questions with less candor, than the other interviews I carried out. However, since these interviews were all with human rights activists who are habitually meeting with foreigners to be interviewed, this risk was mitigated. In any case, they did not appear to be reticent to speak with us and the information provided by them generally fit into the larger understanding I had previously developed of the context in Algeria.

Generally, my questions in interviews focused on the circumstances surrounding the disappearance of their relative and included queries aimed at eliciting their conceptions of justice. Appendix I includes a detailed list of questions that structured these interviews.

The selection of my interview subjects was based on those to whom I had access, which differed in the two countries. In Turkey the human rights organizations freely put me in contact with other organizations or individuals working on my topic of interest. Furthermore, I could draw on the extensive amount of academic writing being done within Istanbul to contact legal academics working on human rights issues in independent research centers and at universities in the city. Multiple scholars have interviewed some relatives of the disappeared in Turkey, particularly those associated with the organization known as the *Saturday Mothers*. Others revealed to me that they had never been

interviewed before. Some relatives I interviewed in Turkey had filed domestic legal complaints and participated in local trials, others had participated in trials through the European Court of Human Rights (ECHR). Others had not participated in any legal proceedings, either because their families' documents had not been accepted by the courts, or because they had not filed proceedings. In short, there was a fair amount of variability amongst my interview subjects in Turkey, in terms of experience with research interviews as well as in terms of experience with legal proceedings.

While in Turkey, I used a snowball technique in my interviews with activists and legal professionals, asking at the end of interviews if there were other people that they might be able to put me in contact with, who could share insight into the topic. The legal professionals that I interviewed came through the recommendations of those individuals I had met in the human rights associations. In general, relatives were more comfortable speaking in Kurdish, and sometimes comfortable speaking in Turkish. However, because I speak neither Kurdish, nor Turkish, my ability to request interviews with relatives of disappeared individuals that I met at events (and not necessarily through the human rights organizations), was limited. The locations of my interviews in Turkey were more diverse than in Algeria. I interviewed most relatives of disappeared individuals at the offices of *Yakay-Der*, since this was what they proposed. For activists and legal professionals, I met them at their place of work or in local public settings.

In Algeria, I also relied upon the organizations to put me in contact with relatives, but for different reasons. Whereas in Turkey I would have been able to connect with relatives of the disappeared, were it not for the language obstacle, in Algeria, the social taboo and fear surrounding the phenomenon of disappearances made it quite difficult to

get in contact with relatives outside of the associations. Most people outside of the associations that I met (for example, through my time spent in Oran with family), would upon hearing my interest in the question of the disappeared, encourage me to choose another topic. For those individuals interested and open to my questions, most did not personally know anyone who had a relative disappeared, or at least they were unwilling to share that with me, if they did. There were two exceptions to this, in which close friends mentioned to me (only after months of my research), that they knew someone who had a family member disappeared. In both cases it was impossible to follow up because of time constraints. Perhaps it was the coming end of my time in Algeria that made them more comfortable sharing this information, knowing that it would be unlikely that I would be able to arrange a meeting. The strength of this social taboo¹⁴ can also be measured to some extent by the willingness of those working in the association representing families to reveal to their friends and acquaintances that they work on the topic. One human rights activist whose brother was also disappeared, confided to me that since he moved from his village (where his brother was taken), most of his friends in the city where he now lives do not even know that he has a family member who was disappeared, nor that he works with the association. If pressed on the matter, he says that he works in civil society promotion (Interview # 365). This made contacting relatives

¹⁴ It could be argued that this strong social taboo is an indication of the weakness of the ICA norm in Algeria. Although they are likely related, I do not think that the one can be considered a proxy for the other. First, the social taboo that I experienced was particularly within the civilian community that is not active in human rights advocacy – a group that is not included in Sikkink's (2011) nor Risse, Ropp and Sikkink's (1999) accounts of the impact of human rights norms. If one argues that the taboo among this population can be understood as a reflection of the lack of official statements supporting ICA (which would ostensibly spread social acceptance of the families of the disappeared), then it could be understood as an indication of a weaker ICA norm in Algeria. However, through the primary and secondary source documents that have informed my analysis in chapters five and six, I demonstrate that both Algeria and Turkey are at approximately the same stage of the spiral model in terms of the ICA norm and its impact on official discourse. Although there is merit in including the larger social context in terms of measuring the impact of human rights norms, the models and approach used here do not take that route.

who are not self-disclosing at the association, very difficult. I did manage to get some recommendations for relatives to interview through those I had already met, but again, these seemed for the most part to be individuals who were comfortable actively associating with the organization.

I ended up interviewing some relatives of the disappeared that had filed (unsuccessful) domestic legal complaints, some who had participated in proceedings in front of the United Nations Commission on Human Rights (under the Working Group on Involuntary and Enforced Disappearances), regarding the cases of their relatives, as well as some relatives who had not taken any legal action regarding the disappearance of their family member. This variety of experiences with legal proceedings is important since it assures that my data regarding conceptions of justice is takes into account a variety of legal experiences.

This reliance on the human rights organizations limits the data I was able to collect in a number of ways. First, it gives me little insight into the level of impact that the ICA norm has had on government officials who are the main proponents of policy change. Second, it means that there is an emphasis within the population that I conducted research in on the ICA norm, given that these subjects are the ones who are choosing to remain active in organizations that advocate this norm. I have taken steps to limit the impact of this lacuna on my analysis through a careful reading of the primary and secondary source documents regarding civil society activism in both countries. My aim was to draw on these documents in order to get a sense of how government officials are responding to the ICA norm, and how the activity of human rights organizations fits into the larger current context.

This data collected from first and secondary source documents is used to gain a sense of the level of impact of the norm among government actors, who as a category of important players, have been inaccessible to me for the reasons mentioned above.

Through this reading of historical, journalistic and academic documents I have collected data that supports this contention. The findings of this analysis are presented in the substantive chapters on Algeria and Turkey (chapters five and six).

This chapter has outlined the methodological choices that have contributed to this study. My previous relationships to the two different field sites were different and impacted my research in a number of ways, which have been addressed above. By adopting an ethnographic methodology I have devoted extensive attention to a wide variety of phenomena in both political contexts, in order to gain the greatest possible leverage for explanation of the phenomena at hand. This chapter closed with an explanation of the type of data I collected, which will be used in the empirical analyses included in the following chapters.

CHAPTER THREE
SUPPORT FOR THE ICA NORM AND MECHANISMS LEADING TO THE
EMERGENCE OF TRIALS

In the following pages I outline the theoretical framework that I use to answer the two main questions at the heart of this project: To what extent has the ICA norm impacted the respective domestic political contexts in Algeria and Turkey? What can explain the emergence of ICA trials in Turkey since 2008, but their absence before 2008 in Turkey, and their total absence in Algeria before and after that time - a country which is similarly situated to Turkey in terms of the spiral model?

Risse, Ropp and Sikkink's (1998) spiral model serves as a basic outline of the process in which human rights norms impact different types of domestic contexts. It explains progress or deterioration in terms of respect for these human rights. Physical integrity violations serve as their main focus, meaning the right to life, the right to protection against torture and inhumane treatment, and the right to freedom from extrajudicial killing and enforced disappearances (2). I use the spiral model to measure support for the ICA norm, in a particular type of context, the aftermath of civil wars. A strong focus on the grassroots support for the ICA norm in both countries is warranted for two reasons. First, the third stage (at which Algeria and Turkey are both situated) emphasizes the importance of grassroots support "from below" for advancement to the next stage along the continuum toward conduct validating human rights norms (Brysk

1993); Additionally, since neither country is subject to extensive pressure to conform to democratization trends, the presence of sustained domestic support for the ICA norm is essential.

This chapter proceeds in three parts. to address these two questions in three stages. First, I explain in more detail the changes in behavior and discourse that occur when countries move through the spiral model. This is important because it shows what is necessary to establish (as I do in chapters five and six) that the two cases are at roughly the same level of advancement in the model. Second, I outline in greater detail why the theory of the spiral model emphasizes on grassroots support for the norm in the phase of tactical concessions, and why I chose to focus my data collection during fieldwork on local civil society actors. Finally, I introduce the theoretical framework used to explain how the emergence of trials in Turkey was possible since 2008, but not in Algeria, nor in Turkey before the shifts in power between 2002 and 2008. This chapter serves as a theoretical framework for second half of the dissertation, in which I provide my data analysis and conclusions.

Measuring the Impact Of Human Rights Norms On Turkey And Algeria Through The Spiral Model

Neither Algeria nor Turkey have demonstrated the highest levels of normative change outlined in the spiral model. Chapters five and six demonstrate that both countries have moved through the first two phases of the spiral model (*repression* and *denial* by the regime), and have reached different points within the third stage of the spiral model - *tactical concessions*. Further supporting this placement at the third stage of the model, the processes of socialization in both countries have been characterized

almost exclusively by *adaptation* and *strategic bargaining*, as opposed to persuasive processes that pull the respective governments into further concessions and *prescriptive status* (in the later phases).

According to Risse, Ropp and Sikink (1999; 2013) a number of different types of political phenomena should be expected in each phase. These can be used to determine whether the country has indeed reached each stage in terms of the impact of human rights norms. In the first stage, *Repression and Activating of Networks*, repression is high and initially complicates communication (reporting, production and dissemination of reports) of information to the TANs and international community. In this phase grassroots actors first attempt to connect with TANs, to pass information to these international actors regarding human rights violations (1999, 22). To determine that this first stage has been reached, one would expect to see attempts at connections with TANs by domestic actors. Movement out of this stage is indicated by effective collection and communication of information regarding rights abuses to international actors, which constitutes an activation of the international human rights networks.

In the second stage, *Denial*, domestic actors have been able to form effective connections with TANs and pass a substantial amount of information and evidence regarding the extent of abuses. TANs work to put the “target state” (the state that is abusing human rights) on the international agenda, meaning they raise awareness among important international actors and foreign states concerning human rights abuses, through lobbying and “moral persuasion” (22-23). This works because powerful Western actors are already tied to human rights norms and will over time be compelled to respond (in some manner) to the accusations being made by domestic and transnational actors

regarding abuses by the target regime (22-23). The target government responds by two types of denial: the refusal of the validity of the norm, and rejection of the argument that the government's practices are subject to international scrutiny (e.g., emphasizing state sovereignty, or denouncing foreign meddling) (23).

To determine that the stage of denial has been reached, one would expect to see signs of pressure by TAN actors on western governments and multilateral institutions, and attempts to persuade international publics, or "reference groups" that are connected into larger institutional structures transnationally (e.g., church groups, lawyers associations, academics, medical experts etc., see Brysk 1993). Additionally, one would expect to see classic denial by government officials in the target state in terms of the validity of the norm and emphasizing the preeminence of national sovereignty. To the extent that government officials refuse to address the norm at all, or the accusations of the domestic or TAN groups, the regime has yet to enter the stage of denial.

In the third phase, *Tactical Concessions*, target governments begin to enact "cosmetic changes to pacify international criticism" from INGOs and Western governments (25). Although these changes are usually minimal, they can encourage the domestic opposition and allow for the growth and strengthening of domestic networks. Tactical concessions can also increase the safety of domestic activists due to the visibility that international pressures has brought to their cause (at least for those actors who are the most well known, see Thomas in Risse, Ropp & Sikkink 1999, 225 for a more detailed explanation of how this played out in the Eastern European cases). As governments move through the spiral model, completing the third stage, they lose control of the domestic situation (26). They no longer deny the validity of the norm and begin to

engage in argumentation that incorporates human rights language, resulting in a shift toward the discourse and perspective of human rights advocates. This can lead to “argumentative concessions” as state leaders become wrapped up in the rhetoric of domestic and international activists (28). States can become “entrapped” in their own language (ibid). In some cases this will push toward a “controlled liberalization” in which the state leaders begin to enact substantive changes to domestic legislation and engage with domestic opposition actors as legitimate representatives of domestic grievances (28). In sum, stage three can be identified when state actors begin to enact concessions and change their discourse in order to alleviate international and domestic pressure.

This is a particularly unpredictable moment. When governments begin to enter the logic of human rights discourse, international actors and foreign states previously pressuring the target government may be inclined to see these initial steps as a sign of improved conditions and therefore reduce pressure as they assume sustained domestic improvements. If domestic actors are too weak (to adequately counter this incorrect assumption, or inexperienced enough that they too take initial concessions for signs of prolonged change), this can ultimately halt the spiral model’s progression, as occurred in Tunisia at the beginning of the Ben Ali regime (Gränzer in Risse, Ropp and Sikkink 1999). In the words of Brysk (1993), “the international human rights regime is activated only by ongoing and gross violations of human rights; institutional reform and retroactive accountability are usually considered prerogatives of sovereign states” (280). Therefore follow up by international actors has been habitually weak, particularly when state concessions come as a surprise. When governments can dominate the transmission

of information regarding domestic rights abuses and portray the domestic situation as improving, they are less likely to receive ongoing intensive international pressure.

Because of this dynamic, to move beyond the tactical concessions phase, it is necessary to have strong local civil society activism which includes the ability to maintain cohesion among domestic opposition in the face of regime intervention, and the continued reporting and transmission of information regarding the long term results of initial concessions.

Indicators that a state has moved into the fourth phase, *Prescriptive Status*, take the form of both behavior and discourse. In this stage, state “actors involved regularly refer to the human rights norm to describe and comment on their own behavior and that of others.” This shift can be demonstrated through behavioral activity such as the ratification of international human rights conventions and optional protocols, inclusion of norms into domestic laws or constitutions, and or the creation of mechanisms within domestic institutions for citizen complaints (29). In terms of discursive changes, in general, states that maintain consistent support for the norm regardless of the audience that they are addressing, or through fluctuation in international pressure regarding human rights norms, can be considered to be fully in this fourth stage, as long as they simultaneously “make a sustained effort to improve the human rights conditions” in their country (30). To the extent that state actors change their discourse when addressing different audiences, the use of human rights language and concessions can be understood as simply strategic activity to advance the material interests of the state actors. In this case it does not indicate movement toward *prescriptive status*.

The final phase, *Rule Consistent Behavior*, occurs when norms “are fully institutionalized domestically and norm compliance becomes a habitual practice of actors and is enforced by the rule of law” (33). Table 3 outlines the expected indicators of movement through the first 4 stages of the spiral model that serve as a measure to determine the impact of the ICA norm in Algeria and Turkey. Neither Turkey nor Algeria have approached the final stage in the model, and it is therefore left out of the table.

Table 3. Spiral Model Indicators by Phase

Stage in the Spiral Model	Indicators to Measure Activity for Given Stage
1. Repression	Repression; Attempts by domestic actors to connect with TANs
2. Denial	Passing of information to TANs; international pressure on western governments and organizations to pressure “target government”; attempts by TANs to influence international “reference groups” denial of norm validity and emphasis on national sovereignty by “target government”
3. Tactical Concessions	Cosmetic changes in the direction of human rights norms; growth of domestic opposition’s legitimacy, activism and political space; increased safety of most visible of domestic actors; loss of control of the domestic situation; increasing use of human rights argumentation and language by the target regime no longer able to claim international meddling; reorientation of the state to greater interaction with domestic actors; controlled liberalization, possible regime change, or alternatively, strategic use of human rights and demobilized international pressure leading to stagnation.
4. Prescriptive Status	Regular and consistent reference to human rights norms in regime discourse; initial institutionalization through ratification of international treaties and integration of norms into domestic mechanisms and laws; little to no variation by regime in the justification of adherence to norms despite diverse audiences.

In chapters five and six, where I outline the development of the spiral model in both Algeria and Turkey, I demonstrate that both countries are at stage three of the model, *tactical concessions*.

Grass-roots Activity

It is important to note that, up until the third stage, domestic actors are working mainly through what Keck & Sikkink (1999) call “the boomerang” effect, in which connections with transnational actors creates pressure on the target regime, in turn resulting in *tactical concessions* by the target government. The use of the boomerang occurs precisely because domestic civil society actors are not able to affect the behavior of their state leaders. To this point in the model the domestic activists have not directly interacted with the state in a way that has elicited state response. This changes when tactical concessions begin because by engaging in the rhetoric of human rights, the regime ultimately legitimizes domestic complaints and therefore begins to recognize them. The simultaneous pressure from above and below “permits the domestic opposition to gain courage and to start its own process of social mobilization” (Risse, Ropp & Sikkink 1999, 238). The further advancement of the spiral model depends here on the domestic mobilization’s strength and continued ability to remain linked to TANs, maintaining the dual systems of pressure on the state.

At this point there are two ways that movement forward in the spiral model can stagnate. First, if the domestic human rights networks are not extensive enough, led by only a few key leaders that can be easily co-opted, silenced, or killed, or if there is simply not enough strength behind the domestic push for normative change, the regime will not move beyond tactical concessions and the international pressure will likely be lost. In the

transition from repression to denial (stage 1 to 2), the TAN activity is the single most important element because of its ability to affect the international agenda through “moral consciousness-raising” (242). In the tactical concessions stage, the *domestic* networks are the most important (242). The case of Tunisia under Ben Ali is illustrative in that, “[i]n the absence of a fully mobilized domestic human rights coalition with ties to the transnational networks, [Ben Ali’s] human rights supporting rhetoric effectively silenced Western criticism, while the domestic opposition was further weakened due to increased repression” and initial co-option (243). When the tactical concessions phase was successful in maintaining pressure on the target state (for example in the case studies on Indonesia, Hungary and Poland), “the most important effect... was to empower, strengthen, and mobilize the domestic opposition” leading to “a lively, widespread, and fully mobilized domestic opposition” (246). Second, if the target government manages to strongly advocate a counter norm, it is possible to stymie the pressure from the international community (and to a lesser extent the domestic pressure from below). This will be addressed in greater detail in the final chapter of this dissertation, in relation to the counter norms associated with of fighting terrorism.

The ICA norm activity in Algeria and Turkey is responding to violations carried out in the context of violent insurgencies and the use of terrorism by anti-regime actors. This provides the state with a strong counter argument for the greater importance of stability and security over human rights norms. Both states have strong incentives to balk at international pressure from “above” (Brysk 1993). Additionally, Risse Ropp and Sikkink point out that in the post 9/11 “the existence and strength of human rights institutions, norms and networks” have fluctuated (21). Given the recent acceptability by

great powers to flout long standing human rights norms (see Sikkink in Risse, Ropp & Sikkink 2013), and their diminishing willingness (or ability) to pressure states in relation to respect for human rights, domestic opposition is even more important for change to occur in Algeria and Turkey.

In terms of the ICA norm, Algeria and Turkey can both be situated squarely within the tactical concessions phase of the spiral model. However, unlike the majority of cases outlined in Risse, Ropp and Sikkink's initial analysis of the spiral model (e.g. the Philippines, Uganda, Czechoslovakia, Poland, South Africa, Guatemala, Chile), both these cases have stagnated at the tactical concessions stage (1999). As will be addressed more fully in the conclusion, this seems to be due to a combination of their respective governments' abilities to use their strategic position in the international War on Terror to halt advancement.¹ In order to understand whether the ICA norm is likely to further affect the domestic contexts of either country, this dissertation focuses specifically on determining whether there is domestic support for the ICA among key domestic norm entrepreneurs.

Measurement of Support for ICA

I conceptualize support for ICA among domestic actors as a dichotomous variable of either no support, or support.² When the ICA norm was included in the main demands

¹ Both Algeria and Turkey have used the recent global consensus regarding the mounting threat of international terrorism to bolster and manage their own internal insurgencies.

² It did not become apparent that the variable's range would be dichotomous until once I began coding my data. Initially, I imagined the support for ICA to be a continuous variable, with at least three levels (strong support, qualified support, no support). Once I began to code my data, it became apparent that the distinction of the middle category was clear in theory but not in practice. Therefore it made more sense to code the data as dichotomous.

for justice of those I was interviewing I considered this support. In interviews where individuals did not mention trials or prosecution as important elements of justice, or where they plainly rejected those methods, I considered this an indication of no support for ICA. A smaller number of interviews included statements that provided qualified support for ICA. In these cases I used my judgment given the larger conversation and other statements made by those interviewees. The entire interview material was always taken into account when coding support for the norm, although in these interviews even greater attention was devoted to coding according to surrounding statements.

In interviews I was interested in determining intersubjective meaning: are these groups advocating for justice in terms of individual criminal accountability or are they emphasizing different conceptions of justice that would lead to responses other than trials? If key domestic actors advocate justice in terms of ICA there is a greater possibility that prosecutions could play out in these two countries in the future. At this stage of the spiral model, strong and continued domestic support by grass roots actors is a necessary element for further advancement of the ICA norm. The presence of these strong domestic networks is a necessary condition for the advancement of ICA in post civil war contexts, but not a sufficient factor for its movement forward. I expect that these key domestic groups do advocate for ICA, but that this is not necessarily the exclusive framing that they use for understanding justice. I was particularly interested to determine their orientation toward state responsibility, since this is considered within the literature on the justice cascade to be the former default in terms of norms of justice at the global level (before the increasing support for ICA in the last thirty years) (Sikkink 2011).

Mechanisms Facilitating Domestic Trials

The spiral model is useful for measuring the impact of human rights norms on the domestic arena of given states within a framework that understands the state as a unitary actor. It gives one a rough sense of whether and to what extent the specific norm has impacted a given domestic context. In order to answer my second question (what facilitates domestic ICA trials), I go beyond this black-box conception of the state, looking specifically at individual actors that make decisions on the ground. The case of Turkey demonstrates why only looking at the question from an international level perspective is inadequate. This perspective can result in missing important domestic activity - such as individual trials in lower courts - that advances behavior linked to the specific human rights norm. This type of activity is not explicitly identified in the spiral model, which focuses on three distinct categories of actors (society, state and transnational/international actors). It is not clear where one would place lower level bureaucrats such as judges and prosecutors. My research demonstrates that when analyzing the impact of specific human rights norms (rather than human rights norms in general, as Risse, Ropp & Sikkink did), new levels of activity can be revealed that are important for understanding the advancement of a given norm. Specifically, because the ICA norm focuses on prosecution (and therefore the legal realm), it is possible for domestic integration of the norm to occur gradually in a piecemeal fashion, at the behest of individual lower level judicial actors (prosecutors and judges) who serve as gatekeepers in the absence of official, unambiguous policy directions. My research demonstrates that the advancement of the ICA norm in Turkey is linked to the actions of

judges and prosecutors and highlights how certain human rights norms can manifest in unique ways according to their content.

To explain the divergence of our two cases starting in 2008, I argue that redistribution of power among elite actors in Turkey resulted in changes to the political opportunity structure available to prosecutors, and created a window of opportunity for the advancement of litigation by rights groups seeking justice (Tilly & Tarrow 2011). When new executive actors pursued legal actions against the military for crimes against the state (what I will refer to as the “coup trials”), the military’s impunity was publically undermined, signaling to lower level judicial actors in a number of ways that the status quo of military immunity could no longer hold. I build on arguments made in the literature on power distribution theory - the claim that policy decisions regarding justice are determined mainly by domestic political power switches from previous authoritarian elites to a new government seeking policies to address justice (Huyse 1995; Nino 1996; Pion-Berlin 1994; Skaar 1999; Zalaquett 1992). I add to this theory by demonstrating that elites do not need to be pro-human rights, nor ushered in by a transition that clearly jettisons past policies. I contend that changes in power distribution can alter the former rules of the game (such as de facto impunity for military officials), rendering them ambiguous for key actors and ultimately allowing for individual activity that was previously high risk, such as the filing of indictments against military officials for human rights crimes.

The human rights (ICA)³ trials discussed in this paper began to emerge at the height of the consolidation of power that had shifted from the military to new Islamist actors (a coalition of the ruling AK party and followers of the Gülen movement⁴) between 2002 and 2008.⁵ I contend that these human rights trials did not come about through an overt policy effort by the executive (as did the coup trials). Rather they were opened individually, by prosecutors responding to victim initiated claims,⁶ in six different geographical jurisdictions around the country.

Second, I argue that, thanks to this redistribution of elite power, legal mobilization that had been ongoing for decades was finally able to penetrate the domestic judicial arena in new ways. Legal mobilization is the process of connecting victimized or disenfranchised citizen populations to legal resources, allowing them to advocate for their rights through legal means (Zemans 1983; Epp 1996; Moustafa 2003, 2007, 2011).

³ When discussing the trials that have occurred in Turkey I make the distinction between two types of ICA trials: (1) human rights trials, which prosecute for individual criminal accountability in relation to human rights violations of individuals; (2) coup trials, which prosecute for individual criminal accountability in relation to crimes committed against the state.

⁴ Until their fallout in 2013. See chapter six.

⁵ The Gülen movement is inspired by the teachings of Fetullah Gülen, a religious leader and self-styled social reformer based in Pennsylvania who has developed a global network of private schools and social organizations. His followers have become substantially integrated into the judicial branch and the police, since the coming to power of the AKP in 2002 (Jenkins 2009, 30).

⁶ Although these court cases were initiated through victim complaints (meaning relatives filed complaints of criminal activity which were then in the hands of investigating prosecutors), these are not instances of private prosecution because the decision on whether to move forward with collecting testimonies and opening of court proceedings rests with the state prosecutor (not a prosecutor representing families).⁷ (“Timeline: What Happened in Roboski?”, in *Bianet English*, December 31, 2012, Accessed October 2, 2015, <http://bianet.org/english/human-rights/13200-timeline-what-happened-in-roboski>). More recently the resumption of the military campaign in the southeast has exposed a wide array of human rights violations (“Turkey: Mounting Security Operation Deaths” *Human Rights Watch* December 22, 2015.

Sustained activity of this kind by human rights activists and legal professionals has been ongoing in Turkey since the early 1990s, but only resulted in domestic trials once the balance of power changed among elite actors, around 2008.

Contrary to power distribution theory, the recent appearance of domestic trials for human rights abuses in Turkey is not a coordinated policy decision by elite executive actors seeking policy change to broadly legitimize the protection of human rights. The AKP government (which I will argue below benefited from the weakening of the military's legitimacy) began committing human rights abuses as early as 2011 (for example the Uludere/Roboski Massacre in December of that year), and has continued to carry out more extensive human rights abuses since the end of 2013.⁷ The ongoing nature of these human rights trials seems to be an unintentional result of the haphazard processes set into motion when elite power (formerly monopolized by the military-Republican alliance), was contested and diffused to a greater number of actors between 2002 and 2008.

By contrast, despite the ongoing legal mobilization in Algeria and the fact that the President has been touted as similarly working to delegitimize the military/security apparatus since 2000, no large scale legal activity questioned the impunity of the military in state courts (like the coup trials) and no human rights trials were possible (even before the amnesty law passed in 2005), since no real shifts in power occurred.⁸ In Turkey, the

⁷ <https://www.hrw.org/news/2015/12/22/turkey-mounting-security-operation-deaths>, accessed February 29, 2015.

⁸ Although my research indicates that Algeria's legal mobilization is weaker than Turkey's in terms of development of the "legal complex," trials have been brought by lawyers and families to both domestic

coup trials and subsequent human rights trials managed to briefly pull back the proverbial curtain on the “ruling” military wizards, for the first time openly recognizing the distinction of their “rule” from those who “govern” (Cook 2007).

To summarize, the two questions I pose in this dissertation are: To what extent is the ICA norm affecting countries that have experienced gross human rights violations during civil wars? And, what mechanisms can explain the emergence of domestic trials in these cases? I argue that, when using the spiral model as a measure, the ICA norm is impacting both countries to approximately the same extent, and that both countries exhibit characteristics of being in the third stage of *tactical concessions*, with domestic support present in key groups. However, neither this explanation, nor the alternative explanations present in the literature in chapter one can fully explain why the two cases diverged in 2008 when lower level judicial actors began to open domestic human rights trials in Turkey. I contend that changes in the distribution of power that occurred in Turkey starting in 2002 and solidifying in 2008 have changed the rules of the game perceived by judicial actors in first instance courts. More specifically, when the new elites (AKP and Gülen followers) gained enough power in the end of 2007, they started attacking the legitimacy of the military through political trials, referred to here as the “coup trials.” These events signaled to judges and prosecutors the end of the status quo of military impunity. Legal mobilization that had been ongoing for decades (and falling on deaf ears), began to receive new attention from prosecutors and judges who were now willing to open cases against military officials for human rights abuses, for the first time.

court systems (Algeria from 1994-2005; Turkey ongoing since early 1990s), with the same unsuccessful results until 2008. There was no detectable change in the legal mobilization in either country at that time.

The shifts in power to new elite actors in Turkey, and the contrasting stagnation and maintenance of longtime power holders in Algeria, explain the divergence of these two previously similar cases at that time.

CHAPTER FOUR
HISTORICAL BACKGROUND ON ALGERIA AND TURKEY- ENFORCED
DISAPPEARANCES IN THE CONTEXT OF CIVIL WARS

In order to understand the ways that domestic actors in both Algeria and Turkey are interacting with the ICA norm, this chapter provides a basic summary of the events leading to human rights abuses in general (and enforced disappearances in particular). This chapter begins by setting the scene. Following a historical review of the domestic conflicts in both countries it offers a review of the post-conflict period.¹ It closes with a brief comparison of the themes that unite the two cases.

Enforced disappearances occurred in Turkey and Algeria in contexts similar to each other in a number of ways. Security forces forcibly disappeared large numbers of people in the context of a protracted civil war, characterized by irregular warfare tactics employed by an insurgent² force challenging state authority. Disappearances were one type of violence within a larger range of ongoing unpredictable violent activity perpetrated by government forces and insurgents, targeting each other and civilians in pursuit of the loyalty of the domestic population. A large number of civilians suffered

¹ The term post-conflict is clearly appropriate in Algeria since the insurgency that rocked the country in the

² I use the term insurgent intentionally because it recognizes the political grievances that are associated with the non-incumbent side. Insurgents in both countries use(ed) terror tactics to varying degrees, and continue to be referred to as “terrorists” by state actors. This depoliticizes the conflict and reorients the audience to the illogical and barbaric elements of the violent tactics used by these groups. This is part of a larger policy in both countries in relation to the War on Terror, which will be discussed in greater detail in the concluding chapter.

dramatically as they were caught between the two opposing forces (Kalyvas 1999). The state created and armed locals to fight off the insurgents, escalating the violence (Atilgan & Isik 2012; CFDA 2016). In both countries, political violence was used strategically to gain and maintain support, as well as combat defections among civilian populations (Kalyvas 1999, Tezcür 2015a).

Irregular warfare dominated the landscape of Algeria and southeastern Turkey in the 1990s. Insurgent strong-holds were for the most part in mountainous regions in which rebel forces maintained the strategic advantage. While insurgent forces were able to maintain control of certain suburbs of Algiers at the height of the conflict in Algeria, the PKK in Turkey never completely controlled urban areas during the 1990s. The Algerian conflict was shorter (1992-1999) than the conflict with the PKK in Turkey (1984-present), however it had a higher concentration of sustained violence, and occurred at the same time that the Turkish conflict was at its most extreme. In both countries many families experienced the enforced disappearance of relatives of all ages (although most were adult men) by security forces.³ The key aspect of enforced disappearance is the placement of the kidnapped individual outside the protection of the law. In both countries families have

³ There are fifteen recorded cases of women in Turkey, out of 1353 total recorded case (Göral, Isik and Kaya 2014, see also [http://www.zorlakaybetmeler.org/victims.php?sex\[\]=02000000000039](http://www.zorlakaybetmeler.org/victims.php?sex[]=02000000000039), Accessed May 22, 2016). There are roughly 50 recorded cases of women disappeared in Algeria (verified by the author through information previously available on the website of <http://www.algerie-disparus.org>). The targeting of men in Algeria is not surprising as those who joined the guerrilla campaign were overwhelmingly male. Some women are recorded as having been kidnaped and kept as wives for militants (Gacemi B. 1998). On the contrary, in Turkey, women participated in the PKK as combatants and logistical support on a much wider scale and therefore it is somewhat surprising that they do not show up more systematically in the cases of those forcibly disappeared. Further analysis of this data is beyond the scope of this dissertation and awaits future research.

waited weeks, months and now years. They do not know the fate of their loved ones, or even the location of their remains.⁴

Algerian Civil War

Since independence from the French in 1962, following one of the longest and bloodiest conflicts in the struggle against colonial oppression (Horne 2006), Algeria established a socialist republic to unite Arab and Berber ethnic populations that had fought together for independence (Roberts 2007; Quandt 1998, 174; Testas 2002a). Confronting a war torn society, extremely high poverty rates, poor public health and low education rates, the government relied on socialist policies to guarantee work, housing and social services through a statist model (Le Sueur 2010, 11-31). Although the constitution recognized Islam as the official religion of the country, the regime governed based upon secular regulations and authority from the prestige of stemming from the successful war of independence from the French. These policies included haphazard attempts to control Islamist political actors (Roberts 2003, 1-31; Testas 2002b). In the early 1980s the government of Chadli Bendjedid distanced itself from the socialist policies of the post-independence years, shifting toward economic liberalization. In combination with decades of emphasis on a secular Arab conception of the state (to the detriment of Berber and Islamist identity politics), the liberalization and austerity

⁴ One distinct difference between the two cases is the difference in beliefs about the fate of those who were disappeared. In Turkey, most family members believe that their loved ones have been killed and their bodies have been disposed of in one way or another. In Algeria, many relatives believe that their family members are being held in secret prisons by the government. Although it is highly unlikely that the total number of individuals considered disappeared are still living, there are some indications that this could be the case for at least some. Additionally, in the early 1990s the Moroccan regime released hundreds of individuals who had been disappeared over the past three decades, and whose whereabouts the regime had refused to acknowledge for that time. See Amnesty International 1993.

measures were too harsh in the context of falling oil prices (Roberts 2007, 53; Azarvan 2010). Civilian protests broke out in the end of 1988 and after a civilian massacre⁵ by military troops in October of that year. To the great surprise of many, Bendjedid's government announced the end to one party rule and opening of multiparty elections for the first time in Algerian history (Cavatorta 2009; Martinez 1997; Le Sueur 2010).

This rapid expansion of political space allowed for the blossoming of hundreds of political parties within a few months, in a country where political participation had been minimal for decades, and recent riots had shown the power of the people. One party in particular, the *Front Islamique du Salut* (The Islamic Salvation Front, FIS) quickly gained votes for its Islamist platform emphasizing the establishment of an Islamic state as the answer to the economic and cultural plight of the country.

The success of the FIS simultaneously engendered fear within the secular intellectual class, pro-democracy circles, and the ranks of the military establishment, who were fearful of an Islamist takeover. In 1992 the generals abruptly ended the democratic experiment through a military coup, canceling the second round of legislative elections (the FIS had won a majority in the first round) and establishing a military high council (*Haute Conseil d'Etat*, High Council of State, HCE) meant to usher in a new government. Violent confrontations began between the military and FIS supporters (ICG 2001, 1; Martinez 1997; Cavatorta 2009). The HCE suspended all other governmental and political institutions, establishing an advisory board run by a group of five men. The

⁵ Addi (1996) indicates that 1,000 civilians were killed by security forces in response to the October 1988 riots.

committee was officially chaired by a civilian president but with strong military participation. The generals appointed a respected independence-war hero Mohamed Boudiaf, who returned from almost three decades of exile in Morocco, to assume the position. Just over five months into his new mandate, President Boudiaf was assassinated by a member of his own security team on national television.⁶ The sudden and public assassination of the newly appointed president, a man who represented in many ways a new beginning for the country, was a portent for the violence that would follow.

Up to 18,000 leaders and civilian adherents of the FIS were arrested and sent to camps in the Sahara, as the underground elements of the Islamist movement took up arms against the state, quickly transforming the failed democratic opening into civil war (Tlemçani 2008, 3; Le Sueur 2010, 48, 55; El Watan 2009). The country was plagued by violence lasting almost a decade and costing between 80,000-200,000 Algerian lives (Mundy 2013, 40-41).⁷ In this context of intense violence, civilians were caught between security forces and the multiple and changing insurgent fronts. Although the armed wing of the FIS (the *Armée Islamique du Salut*, AIS) was among the active participants, it was quickly joined by a myriad of competing insurgent groups, loyal to various leaders. There was no central organization among Algerian insurgents. Instead, the violence was “decentralized and regionally based”, with rampant infighting and switches between control of power occurring unpredictably between government forces and insurgents, and also between different insurgent groups (Martinez 2000). The experience of the civilian

⁶ The official version blamed an extremist who had infiltrated his team (Le Sueur 2010, 53).

⁷ The range of possible deaths associated with the conflict is highly contested and ambiguous. See Mundi 2013 for an analysis.

population in the Algerian civil war confirms the current literature arguing that fragmentation in civil war results in greater violence toward the state and co-ethnics (Cunningham, Bakke & Seymour 2012). Insurgents murdered thousands of men, women and children, while local advocacy groups claim an additional 10,000 individuals were victims of abductions by insurgent forces, the remains of half of whom have not been located since (Human Rights Watch 2003, 31).

Support for the insurgents was initially strong in certain core locations that had voted for the FIS, but waned as the civil conflict increased in intensity (Kalyvas 1999, 260 quoting Aubenas 1998; see also Metz 1994).⁸ Disappearances were highest in the zones that had voted majority FIS, with many local legislators from the FIS party among the victims (CFDA 2016, 55). Security forces and insurgents coerced civilian actors for loyalty in exchange for protection. This often simply invited attacks from other insurgents or lack of protection from security forces, as a response to what was seen as defection to competing groups (Kalyvas 1999).

During this time state security forces carried out between 7,000-10,000 enforced disappearances.^{9 10} These disappearances occurred much like those in other countries (including Turkey): sometimes with shows of great force, surrounding whole houses or

⁸ <http://countrystudies.us/algeria/115.htm> Section title: Return to Authoritarianism, January 11, 1992. Accessed June 30, 2015.

⁹ This number is contested and still undetermined even within the organizations representing families of victims. The CFDA has information regarding 5,000 cases of enforced disappearances, with detailed files on 4,635 (CFDA 2016, 2). Government officials have at times referenced up to 10,000 cases.

¹⁰ In fact, some human rights organizations claim that the systematic use of enforced disappearances in the country is actually associated with the phasing out of two previously used types of judicial processes that allowed for indiscriminate targeting and long-term imprisonment of suspects: administrative detention and special courts. Both were phased out in 1995 (Human Rights Watch 2003, 16).

invading neighborhoods to take certain individuals in the middle of the night (CFDA 2016, 32), other times through more routine police arrests by individuals in uniform or civilian attire, often in unmarked cars, during the day at work or at home. Many of the individuals disappeared were sympathetic to the FIS, and many others were ostensibly pro-government or anti-insurgent (ibid., 28). Many cases also seem to be the result of personal vendettas in which neighbors or coworkers denounced individuals as insurgents for personal gain, or to settle an account. At the time, families didn't know the extent of these disappearances on a national scale, but as the level of violence diminished in the late 1990s families began to organize collectively (Collectif des Familles des Disparu(e)s en Algérie, 2013).

In the end of 1994, under the auspices of the *Sant Egidio* Catholic Community in Rome, representatives of the FIS, the FFS (*Front des Forces Socialistes*, the main opposition party) and the FLN¹¹ joined together to propose a peaceful political solution to the ongoing Algerian conflict. They met again in January 1995 issuing an agreed-upon platform (Sant Egidio 1995).¹² This negotiated settlement attempt is perhaps the most explicit example of the split between the usual actors of the civilian government, (represented by the FLN party), who supported a negotiated settlement (referred to as “*les conciliateurs*”) and the military commanders who rejected the opportunity out right (referred to as “*les éradicateurs*”). Coming at a time of military losses in the campaign against the Islamist guerrillas, it would have been difficult for the military to accept the

¹¹ *Front de Liberation Nationale*, the main political party that has monopolized the government in Algeria since independence, formed out of the independence movement.

¹² La Comunità di Sant'Egidio e la Pace, Algérie, 13/01/1995, La Plate-Forme de Rome http://www.santegidio.org/archivio/pace/algéria_19950113_FR.htm Accessed June 20, 2015.

peace accord without losing face or appearing to give into what they perceived (and denounced) as foreign meddling (ICG 2001, 11).

The insurgent-military conflict continued for another five years, with large-scale civilian massacres beginning in August of 1996 (Bedjaoui, Aroua & Aït-Larbi 1999). According to victim accounts, these massacres seemed to occur to some extent in regions that had previous high support for the FIS (Yous 2000). The only comprehensive (although still initial) study of the Algerian massacres (Bedjaoui, Aroua and Aït-Larbi 1999), reported that the massacres could possibly be the result of five different sets of factors: “1) Islamist retributive campaigns; 2) counterinsurgency military tactics; 3) an expedient tool in factional hostilities within the army; 4) an eviction tactic for land privatization; 5) a generalized settling of family and tribal scores” (360). Bedjaoui Aroua and Aït-Larbi demonstrate through their large-n study of macro-indicators (of monthly and weekly fluctuations of mass killings, in relation to election times and political geography), that there is little support for the contention that the massacres were the result of infighting among families and tribes. Furthermore they found support for the theory that massacres were used strategically by the military to rapidly mobilize the population for the counter-insurgency during times when the insurgents were recently setback (353). Finally, they also found support that they were used by factions within the military (*les éradicateurs*) to undermine the conciliator faction of the military” (361).

Between August 1996 and December 1998 eighty-seven civilian massacres occurred, with the number of victims ranging from four to 375, in each event (Kalyvas 1999, 249-50). Questions regarding the perpetrators of massacres in Algeria remain

clouded in controversy, with some claiming military involvement or military infiltration of Islamist insurgent teams, as the Bedjaoui, Aroua and Aït-Larbi (1999) data indicates (Yous 2000; Souaïdia 2001; Le Sueur 2010, 214).¹³ The FIS and its armed wing, the AIS, requested independent investigation of the massacres numerous times, indicating that some members of the Islamist insurgency factions also believe that the official version (rejecting state complicity) is suspect (ICG 2001, 9 and 11).¹⁴

The civil war ended in approximately 1999 with the arrival of President Abdel Aziz Bouteflika. Despite general success in terminating the conflict, violence continued to a certain extent in the first few years of his presidency. Massacres, arbitrary executions and disappearances continued according to the International Crisis Group into 2000 (2001, 2). In 2001 the country was also rocked by the Black Spring in the eastern Kabylie region, in which hundreds of protestors were killed as they were protesting the lack of cultural rights for the Berber population in the country (ICG 2003). This event remains a grim reminder that violence by military or state security actors can at times of uncertainty or instability still be difficult to manage or contain. The war against insurgents, although for all intents and purposes terminated, remains the justification for ongoing and sporadic military activity, with habitual death counts of insurgents published in daily newspapers around the country (e.g., Guenafa 2016).

¹³ For information regarding false flag operations see Aggoun & Rivoire 2004.

¹⁴ The controversy was further enflamed by testimony provided during a defamation case that was prosecuted in France in 2005, against Habib Souaïdia, by former defense minister Khaled Nezzar, for the book published by the former denouncing government complicity in massacres, among other things (AïtOuméziane 2002).

Turkish Civil War

While Turkey became an electoral democracy between 1945 and 1950 (Zürcher 2004, 218), the Turkish Armed Services (*Türk Silahlı Kuvvetleri*, TSK) has remained heavily involved in politics, staging interventions in 1960, 1971, 1980, and 1997. More recently the military publically threatened interference in the 2007 presidential elections (Yilmaz 2009, 125). The civilian executive (led by the Justice and Development Party, *Adalet ve Kalkınma Partisi*, AKP, since 2002) has dramatically altered civil-military relations to fit the criteria for accession to the European Union, based on (among other things) civilian control of the armed forces (Tokas & Kurt 2010). These changes have elicited great interest and, until recently, had earned Turkey the status of a consolidating democracy (Cook 2007). However, as mentioned above, problems with democratic consolidation have simultaneously flared up on other fronts and the executive has now increased its control over the judiciary (to be discussed in more detail below).

Starting already at the establishment of the Turkish Republic in 1923, Atatürk promoted a new nationalist ethos based upon a homogenous Turkish ethnic identity, in the aftermath of the vibrant diversity present earlier in the former Ottoman Empire (Cagaptay 2004). The new policy enshrined Turkish ethnic identity as the only legally recognized ethnicity, primarily through strict linguistic laws (Zeydanlioglu 2012) and pseudo-scientific research linking national identity to race (Cagaptay 2004, 92).¹⁵ Laws restricting cultural and linguistic rights of minority groups have been particularly severe in the post-1980 coup period (Yildiz & Muller 2008, 78-89; O'Neil 2007) and Kurds,

¹⁵ For example, the “Sun Language Theory” (which posited that Turkish is actually the mother tongue of all other languages) (Cagaptay 2004, 92).

who represent the largest ethnic minority in Turkey, have been dramatically and negatively affected (Biner 2012; Yildiz & Muller 2008; Gunes & Zeydanlioglu 2014).

Kurdish groups reacted to the establishment of the Republic with intermittent revolts: in 1925 (the Sheikh Said uprising), 1930 (Ararat uprising) and the Dersim uprising in 1938, in which thousands of Alevi Kurds were systematically massacred by Turkish forces (including the elderly, women and children) (van Bruinssen 1994; Marcus 2007, 307; Gunter 2015, 70). However, it was not until the 1960s and 1970s that Kurds started to mobilize politically in a more modern sense, and they often aligned strongly with leftist groups, popular at the time (Marcus 2007). During this progressive and tumultuous period, a series of interrelated underground Kurdish groups formed starting in the early 1960s, repeatedly petering out and springing up again under new names or new direction. They focused mostly on publications of clandestine manifestos and political philosophical musings on the best tactics and timing for a Kurdish revolution, and although some of them advocated secessionism through violent revolution, none of them initiated violent activity against the state (Tezcür 2015, 253).

At the end of the 1970s Kurds were for the most part living in their historic homeland, referred to as Kurdistan, which covers an area of territory roughly divided between southeastern Turkey, western Iran, northeastern Iraq and northern Syria (with minorities living as diaspora communities mostly throughout Europe). These communities are to some extent culturally and linguistically diverse, with the majority speaking *Kurmanji* Kurdish, then *Sorani* Kurdish, *Pehlewani* Kurdish and some speaking

Zaza or *Gorani*.¹⁶ Although there have been varying levels of liberties grudgingly provided in each country, historically (states and often non-Kurdish citizens) viewed Kurdish minorities with suspicion. All regional governments have persecuted their Kurdish populations, although with varying methods and to different extents in each country (Yildiz & Muller 2008, 4-20).

The PKK the Kurdish Workers' Party, *Partiya Karkerên Kurdistan*), was (officially the created in 1978, however, it was not until after the military coup of 1980 (and the subsequent authoritarian crack down on all types of political activity) that the group started to show itself as a serious threat to the Turkish government, and the leading Kurdish militant group. Although it initiated violent activity, particularly targeting landlords and tribal leaders in the Kurdish regions starting in 1978 (Tezcür 2015a, 253), it took another six years before armed struggle against the TSK was launched in 1984 (Marcus 2007). Led by a previously unknown college drop-out turned revolutionary, Abdullah Öcalan, the PKK quickly became notorious for its decisive maneuvers and violent tactics, targeting both TSK forces and Kurdish opponents (Marcus 2007, e.g. 5375). When the insurgency was launched against the Turkish state, Öcalan was comfortably stationed in Damascus, from where he directed all PKK activity with the tacit approval of the former Syrian president Hafez al Asad, until 1998 (Marcus 2007, 269).

The conflict with the PKK is one of the longest running ethnic conflicts in contemporary history. It has claimed approximately 30,000 lives over the last three and a half decades and caused the displacement of several hundred thousand people (Yükseker

¹⁶ The origins of Zaza and Gorani are highly contested.

2005, 5). Fighting has for the most part been contained in the southeast of Turkey, where the PKK has historically enjoyed its strongest support. This geographically concentrated aspect of the conflict has led recent scholarship to categorize Turkey as a “conflicted democracy” (Ní Aoláin & Campbell 2005, 176; Budak 2015).

There are two reasons the conflict has been difficult to resolve: 1) because of widespread popular support for the PKK among Kurdish citizens in the southeast, where the war has for the most part taken place; 2) the government’s refusal to accept a larger Kurdish problem - conceptualizing the PKK as a symptom of the government’s treatment of its Kurdish minority, rather than the cause of it. This has resulted in a stalemate. Popular support for the PKK has been attributed to various causal mechanisms: the displacement by the PKK of oppressive landlords leading to support from those previously exploited (Romano 2006, 73-77); and the ability of the armed insurgency to capture the popular imagination through demonstrations of culturally symbolic importance, such as the reinvention of the Newroz festival (Gunes 2012; Aydin 2014). More recently Tezcür (2015a, b) has argued that the emergence and sustenance of the PKK as a popular organization is due to a combination of multiple factors: the strategic use of violence by the PKK to provide benefits to the local population including credible protection from local elites, revenge for perceived familial and tribal injustices feeding PKK recruitment; social mobility in an otherwise bleak societal context of deprivation; and gender emancipation for young women (2015a). This coupled with the organization’s brutal attacks on opposing Kurdish organizations (not to mention dissent within its own ranks), has ensured strong allegiance to the PKK despite what amounts to major military losses and the capture of their leader in the end of the 1990s (Marcus 2007). Recruitment

has been steady in the post 1990s period for other reasons. Particularly, in this period recruitment rose among more educated and urban individuals, a surprising phenomenon explained by Tezcür (2015b) through a heightened sense of existential threat that leads to high-risk decision-making for low probability of improved outcome (25). Furthermore, recruitment is increased in areas with higher political mobilization particularly when these areas also experienced high levels of violence and have not seen increases in literacy rates (21).

Popular support enjoyed by the PKK is all the more important because of the social, physical and psychological damages resulting from the war in the 1990s. Enforced disappearances were a mainstay of the tactics used by security forces in the southeastern regions during that time (Goral, Isik & Kaya 2013). In 1980 Turkey was placed under martial law. This situation was maintained in many Kurdish provinces until 1987, at which time portions of southeast Turkey were declared under a state of emergency, lasting in some provinces until 2002 (Yildiz & Muller 2008, 18). During this period, the rule of law deteriorated under a centralized system characterized by lack of judicial review and special military courts. A year after the declaration of war by the PKK the Turkish military established a system of civilian militias similar to those set up in Algeria in 1994 (known as village guards, *koruculuk* in Turkish)(Atilgan & Isik 2012).¹⁷ A common counterinsurgency tactic, the militias were paid and armed by the state to fight in and around their own village territories against the PKK. This substantially increased the TSK's ability to fight the PKK, giving them a greater advantage than they had

¹⁷ The village guards are currently estimated at 50,000 (International Crisis Group 2014, 23).

previously benefited from because of the increase in recruits, and thanks to the village guards' intimate knowledge of the terrain.

However, as is common with the introduction of civilian militias, violence affecting civilian populations also increased dramatically (Kalyvas 1999, 266; Yildiz & Muller 2008, 153). Villages that refused to cooperate were subject to (unofficial) reprisal attacks by TSK forces and increasingly targeted for official forced evacuations (and subsequent looting, burning of villages and violence of all kinds), with a total of 5000 villages and hamlets affected, internally displacing between several thousand and 3 million people to large city centers around the country (Yükseker 2005, 5 for the lower end estimate, Yildiz & Muller 2008, 153-168 for the higher end estimate).¹⁸

In this context violence was widespread and perpetrated by multiple actors. Security forces and village guard units habitually carried out raids accompanied by beatings, sexual assault and rape. In this context TSK Special Forces also carried out enforced disappearances (*zorla kaybedilmesi* or *gözaltında kayıp*, meaning literally 'missing under custody') and extrajudicial killings (*yargısız infaz*, meaning 'killings by unknown perpetrators'). The state forces also overlooked and tolerated violence committed by the Kurdish Islamist group Hizbullah, against PKK supporters (Marcus 2007, 169; Goral, Isik & Kaya 2013).¹⁹ The Truth and Justice Memory Center (Hakikat Adalet Hafıza Merkezi) has, since 2011, focused its efforts particularly on researching

¹⁸ The larger number represents all villages and hamlets affected by these policies, whereas villages that were forcibly evacuated are currently estimated to be around 1,000 (International Crisis Group 2014, 24).

¹⁹ Hizbullah, known as *hizbullkontra* among victims' families, is unaffiliated with the Lebanese group of the same name.

and documenting these two types of crimes that were carried out by state forces in Turkey. They have come to a preliminary total of 1,353 cases of enforced disappearance since the September 12, 1980 (Göral, Isik and Kaya 2012, 24). It is likely that this number is very low as gathering of information regarding the disappearances remained difficult even during the peace negotiations (2013-mid 2015). Now that the military has reinitiated the war with the PKK in the southeastern regions of the country (since mid 2015), it is more impossible.²⁰

In October 1998, Öcalan was forced to flee from Syria, bringing to a close two decades of relatively easy maneuvering and strategic and ideological direction of the PKK fight with the Turkish state. Over a period of months he was forced from one country to another, seeking asylum, when in January 1999 he was captured by Turkish forces in the Greek embassy in Kenya. He has been imprisoned on Imrali Island, in the sea of Marmara since that time, and was tried and sentenced to death, although this was changed to life imprisonment due to judicial reforms undertaken by Turkey in 2002 (Marcus 2007, 296).

Öcalan has, surprisingly, managed to maintain his jealously guarded grip over leadership of the PKK even from prison (Marcus 2007, 286-307). Since the end of the 1990s the military conflict had reached a general stalemate with lulls in violence occurring during unilateral ceasefires such as those declared by Öcalan in 1999, 2006, 2010 and more recently in January 2013. The AKP led government initiated what it

²⁰ In the most recent days the conflict in the southeast has taken another dark turn with at least one new case of enforced disappearance. This was the first new case reported since the early 2000s (Hafiza Merkezi 2016).

called “Kurdish openings” in 2005 and 2009 and then an ultimately failed Peace Process with the PKK between 2013-2015 (International Crisis Group 2014; Carnegie Endowment 2007).²¹

Civil Wars in Algeria and Turkey Compared

The civil wars that occurred in Algeria and Turkey resemble those occurring in other countries around the world at approximately the same time, to the extent that they included high levels of violence targeting civilians. In fact, civil wars were occurring around the globe in the last decade of the millennium. For example, conflicts took place in Central and South America (Guatemala, Nicaragua, Columbia), Europe (Northern Ireland, the former Yugoslavia), Eurasia (Chechnya, Afghanistan, Nepal, Sri Lanka, East Timor), Africa (Mozambique, Angola, Burundi, Sudan) and elsewhere in the Middle East (Iraqi Kurdistan, Lebanon). However, many of these conflicts are different than the two analyzed here in a number of ways. The Algerian and Turkish civil wars were similar in that they were not dramatically internationalized,²² they occurred in roughly the same time period,²³ both included extensive enforced disappearances, and the dynamics of opposition were characterized generally by a two-sided antagonism (state vs. insurgents).²⁴

²¹ Carnegie India, <http://carnegieindia.org/2009/12/01/kurdish-opening-in-turkey-origins-and-future> Accessed May 15, 2016.

²² As was the Lebanese civil war, for example.

²³ Unlike the Colombian civil war which had been ongoing for decades, or the Chechen civil war, which was shorter and experienced multiple iterations.

²⁴ As opposed to multiple actors as in the case in the Lebanese or Angolan conflicts.

There are a number of differences between the aftermath of these conflicts in Algeria and Turkey. First, the conflict in Turkey has since seen a resurgence of violence after the 1990s. In contrast, the Algerian insurgents have been substantially marginalized. Those that are still active have recently transformed into local chapters of international jihad organizations, such as Al Qaeda in the Islamic Maghreb (AQIM) or perhaps smaller groups with allegiance to ISIS (Al Monitor, March 15, 2015).²⁵ There is no ongoing violence associated with the civil conflict in the 1990s in Algeria. Furthermore, the Islamist political parties that do exist today are disorganized and delegitimized by endemic infighting, and some have been co-opted by the Algerian regime (GhanemYazbeck 2014).²⁶ For its part the FIS is still banned from political activity. In sum, the PKK currently has more political leverage against the state than what is left of the Islamist political (violent or non-violent) actors in Algeria.²⁷

Additionally, a number of the post-conflict policies carried out in the two countries mirrored each other. For example, both countries passed legislation providing monetary compensation to relatives of victims of enforced disappearance, which simultaneously worked to co-opt these relatives into documenting adherence to the state narrative (e.g., requiring families to sign declarations attributing the death of their loved

²⁵ <http://www.al-monitor.com/pulse/security/2015/03/libya-isis-control-algeria-egypt-tunisia-impact.html> Accessed July 2, 2015.

²⁶ http://carnegieendowment.org/sada/index.cfm?fa=show&article=54510&solr_hilite=Algeria Accessed July 2, 2015.

²⁷ Although, the political forces associated with Algerian insurgents are now working within the system, and are no longer being openly attacked by the state.

on to insurgent forces in order to receive monetary aid or compensation).²⁸ Although Turkey did not establish a legal amnesty law inhibiting prosecution of crimes committed during the conflict, domestic Turkish courts certainly observed what amounted to de facto amnesty through their refusal to accept cases brought before them until 2008.

As the current literature suggests, criminal prosecution for human rights abuses generally has been carried out in regimes that are clearly democratizing (e.g., Argentina, Greece, Chile), and the presence of genuine human rights trials in authoritarian contexts are rare. In terms of the amnesty law passed in Algeria, it is an example of a larger trend in post-conflict and transitional justice cases, in which the stability of the rule of law and the continuation of peace are determined to be more urgent and immediately essential than establishment of the truth or legal consequences for criminal activity (Mallinder 2012). In the post conflict period Algeria and Turkey resemble other non-democratic cases that have been characterized by policies of official amnesia regarding state crimes (e.g. Lebanon, and also the Southern Cone countries in the aftermath of military dictatorships in the 1970s.²⁹

Civil Society Development in the Post-Conflict Period

Despite the fact that the height of violence occurred in both countries in the 1990s, the level of civil society development since that time in Turkey outweighs what has been accomplished in Algeria. This is not surprising given the greater linkage of

²⁸ Private communication with activists from Hafiza Merkezi.

²⁹ However, amnesty laws have been generally less common in the Middle East North Africa region than in other regions globally in the last three decades (Mallinder 2012, 17).

Turkey with multi-lateral institutions such as the European Union, and the Council of Europe, (which to some extent serve to pressure the government to adhere to democratic norms) (Levitsky & Way 2010),³⁰ not to mention the ongoing and long-term brain draining of Algerian civil society and lack of networks with diaspora communities outside the country (Colonna 2005). In Turkey there are a number of human rights organizations and legal professionals representing and working with relatives of the disappeared, from within the domestic and international arenas.

In Algeria, there is one human rights organization working domestically on disappearances, and one main organization representing victims of violence by insurgents from the same period. These organizations do maintain ties with a small group of domestic organizations and international organizations such as Amnesty International, Human Rights Watch, the UN Working Group on Enforced Disappearances, and regional organizations working on the issue. Most importantly, in comparison to Turkey, the situation in Algeria is characterized by a dearth of cross cutting ties between different local actors, such as working professionals (in the legal and medical realm), and members of the academic community (working on politics, law, philosophy etc.), academic institutions and think tanks addressing human rights, as well as members of the media and student groups. These actors are more connected and widespread in Turkey. The level of advocacy and its impact are not as extensive in Algeria as in the Turkish case.

This comparison could be simplified into a regime-based analysis: Algeria is authoritarian and therefore the ability of social actors is more limited, whereas Turkey

³⁰ This will be addressed more fully in the concluding chapter.

was historically more democratic and therefore civil society activity has flourished.

However, this explanation does not shed light on the causal mechanisms that facilitate or inhibit the emergence and integration of the ICA norm through domestic trials.

Furthermore it does not explain the temporal variation in the Turkish case, in which a flurry of domestic prosecutions were initiated between 2008 and mid-2015, after consistent unwillingness within the judiciary to prosecute military officials since the 1990s. Similarly, the regime-based explanation has difficulty explaining why these two cases would diverge in terms of the manifestation of trials in the period of time when their regimes have been the most similar in terms of authoritarian policies. The level of human rights activity must be taken within a context of the spiral model – which indicates that deepening of networks is expected to occur in the third stage of tactical concessions. Although Turkey is more advanced than Algeria in these terms, it does not place the country at a significantly different location in terms of the impact of the ICA norm. The impact of the norm cannot explain the emergence of trials in Turkey and their lack thereof in Algeria. The next two chapters demonstrate that the two countries are at roughly the same stage of integration of the ICA norm into domestic politics. Chapter six also addresses the question of what accounts for the divergence of Algeria and Turkey in terms of the ICA norm in the last six years.

CHAPTER FIVE

THE ICA NORM IN ALGERIA, THE SPIRAL MODEL

This chapter proceeds in four parts: first, I lay out the evidence indicating Algeria's place within the spiral model concerning the impact of the ICA norm; Second, I look more closely at the data collected through fieldwork in order to determine the nature of domestic support for ICA in key groups who act as norm entrepreneurs and catalysts for the further development of the domestic normative environment; I show that the Algerian regime has demonstrated various elements of the first three stages of the spiral model (*repression, denial and tactical concessions*) at different times with significant overlap between stages, but that Algeria has not moved beyond the third stage. Third, I analyze the data on Algeria's placement in terms of the main causal mechanisms used in the current literature to explain advancement toward domestic trials. Like many of the cases analyzed originally through the spiral model, the phases of the model are more distinctly separated in theory than in practice. The chapter closes by elaborating on the conclusion that if fragmentation of state power and the rise of counter-elites occurred in Algeria, as has occurred in Turkey, the emergence of domestic trials targeting military officials for human rights abuses could emerge.

Stage One: Repression

During the beginning of the civil war, Algeria was clearly in the period of *repression*, the first stage in the spiral model. According to the CFDA/SOS Disparu(e)s, enforced disappearances started occurring in 1992 and were ongoing until at least 2000

(CFDA 2016, 95).¹ These violations took place within the wider context of the civil war, described in the previous chapter. In short the context for human rights in Algeria at this time can generally be understood as a crisis of extensive and wide-ranging abuses including extrajudicial killings by security forces and arbitrary killings by insurgents, over 80 civilian massacres (ranging from five deaths to over 500), abduction with sexual assault, mutilation, rape of women and girls, public bombings in civilian areas, not to mention the widespread torture used by security forces, police and armed civilian militias (village guards) (Human Rights Watch 1998; Bedjaoui et al. 1999, 1445).

The *repression* stage is most strongly characterized in the spiral model by the creation of an “informational vacuum,” meaning that initially, opposition groups have little capacity to publicize the crimes being committed by authoritarian leaders, therefore leaving little for those leaders to deny (Risse, Ropp & Sikkink 1999, 6). Between 1992 and 1997, activity on the ground was limited in its international impact. For the most part, families of disappeared persons attempted to engage domestic institutions ostensibly established by the state to receive complaints of human rights abuses after the (failed) democratic transition of 1991 (Human Rights Watch 2003, 19-28). The main institution at this time was the *Observatoire Nationale des Droits de l’Homme* (National Observatory of Human Rights, ONDH).² The Algerian regime created the ONDH in 1992 through executive order N92-77. This institution served as

¹ In an interview early last year the director of the CFDA/SOS Disapru(e)s revealed that their office has received some new complaints of disappearances, the most recent of which occurred in February 2015

² This organization was set up in 1992 with the democratic opening. It was staffed completely by bureaucrats, with no activist participation.

the official venue through which all citizens had to pass to report any human rights abuse, including families of a disappeared relative.

In most cases relatives of those who had been disappeared spent extensive time visiting police stations, gendarmerie offices, military barracks and check points throughout the city and region where their relative was taken, attempting to investigate what took place. Families were eventually directed to the ONDH. This indicates that the ONDH was, from the beginning, established by the state more for international consumption than domestic policy. Often offices were reported as being closed by relatives. When they were functional, these bureaucrats would register the complaints of a disappearance and claimed to carry out investigations into the disappearance (CFDA 2016, 95). In reality, when the observatory did create files for disappeared individuals, the investigation consisted in notifying the security services of the disappearances (in which the security services were themselves most often implicated) (ibid.). A meager effort at investigation was carried out in 1997 by the security services (after the ONDH had been collecting complaints about disappearances for at least three years), in which they attempted to clarify 514 of the cases in a report submitted to the ONDH (less than 20% of the cases reported to the ONDH to that point) (ibid, 96). Not a single case of enforced disappearance was resolved.

Beyond filing reports with the ONDH, families attempting to locate relatives who had been taken often received contradictory or clearly incorrect information from multiple state institutions over months and years (Human Rights Watch 2003, 12). The CFDA, and the 32nd session of the Permanent People's Tribunal have determined that, three main groups were

responsible for enforced disappearances in Algeria.³ The first group was made up of units of “combined forces” (including Special Forces trained in anti-terrorism tactics, from the army, gendarmerie and police. These units were trained and operated simultaneously through the *Département du Renseignement et de la Sécurité* (DRS, intelligence department) and the *Armée Nationale Populaire* (National Popular Army, ANP) (CFDA 2016, 29). This first group is thought to be responsible for the whereabouts of between ¼ to ½ of the disappeared in Algeria. Regular security units are thought to be responsible for the majority of other disappearances (carried out by units from either the gendarmes, military or police). A slightly smaller number of disappearances are attributed to paramilitary organizations armed by the government (known as “the patriots” or the “communal” or “village guards”) (ibid. 29).

Already by early 1994, the ONDH “was receiving hundreds of complaints annually from relatives of ‘disappeared’ persons – four years before state officials acknowledged a problem” (Human Rights Watch 2003, 47). Up until late 1997, the regime had received relatively little pressure domestically or internationally regarding disappearances, but had nonetheless been undergoing extensive pressure regarding the call for independent investigations of the civilian massacres that had been ongoing since 1994 (Human Rights Watch 1998). The greater focus within the international realm on massacres was partly due to the inability of the regime to control the spread of information about their occurrence, particularly through images of the aftermath.

³ The Permanent People’s Tribunal is a court of public opinion, which originated out of the Russell tribunal regarding the Vietnam War. For more information regarding the 32nd session which examined human rights abuses in Algeria from the 1990s see the website which includes all documents provided to the court: http://www.algerie-tpp.org/algerie_tpp.htm .

One of the most important events drawing international attention of this kind was known as the Bentalha massacre. Bentalha, a suburb of Algiers also referred to as Baraki, was the target of multiple massacres (notably in November 1996, and later in October 1997) but the most extensive attack occurred on the night of September 22, 1997 when over 200 civilians were slaughtered, and more than 100 injured, as “armed forces units with armored vehicles were stationed outside the village and [even] stopped some of those trying to flee” (Bedjaoui 1999, 79, quoting an Amnesty International report). Hocine Zaourar (an Algerian photographer working for *Agence France Presse*) took a photograph the next morning capturing the moment Oûm Saad (a women who lived in Bentalha), learned of the death of her family members in the carnage of the night before. The photograph, dubbed “the Madonna of Bentalha” appeared on the front page of no less than 750 journalistic publications around the world on September 24, including The Los Angeles Times, The International Herald Tribune, and the leading French newspapers (Convert, Madone de Bentalha).⁴ The Algerian regime could no longer count on the informational vacuum regarding the extent of human rights atrocities that had reigned in Algeria to this point.

Stage Two: Denial of Human Rights Abuses

The international pressure created by this immediate availability of information regarding human rights violations pushed the Algerian regime into the second stage of the spiral model, *denial*. The regime immediately began to “campaign against the photographer, accusing him of having given a poor image of the country, even to have served the ends of the

⁴ http://www.pascalconvert.fr/histoire/madone_de_Bentalha/dans_la_presse.html Accessed May 16, 2016.

terrorists: the journal *Horizons*, close to the [Algerian] government, suggest[ed] that the photograph was staged” (l’Encombrante Madone de Hocine Zaourar, Le Monde).

In response to calls by the United States and other international actors for independent investigations into massacres (Chicago Tribune 1998⁵) the Algerian authorities resorted to classic denial. They first argued that ongoing abuses should not be considered human rights violations (and therefore subject to norms of international intervention). According to officials, visits by investigatory delegations concerning human rights abuses would be “‘interference in internal affairs’...” and were rebuffed through “the authorities’ persistent and forceful refusal to allow access to international human rights experts” (Bedjaoui, Aroua and Ait-Larbi 1999, 483). When asked by the UN Human Rights Committee in July 1998 about the “widespread human rights crisis” “the Algerian delegation insisted that ‘there was no crisis of human rights in Algeria’ but rather a ‘terrorist phenomenon which violated human rights’” (Human Rights Watch 1998, 1). The authorities’ response demonstrates “a continuing refusal to recognize the validity of international human rights norms and thus an unwillingness to submit themselves to international jurisdiction in such matters” (Risse, Ropp & Sikkink 2013, 6). After 1998, this denial tactic was employed in response to enforced disappearances as well.

⁵ http://articles.chicagotribune.com/1998-01-08/news/9801080094_1_massacres-algerian-press-servicealgerian-authorities Accessed May 15, 2016.

In a letter to Human Rights Watch, the Algerian Ambassador to the United States publically addressed the topic of enforced disappearances. This was the first time a government official broached the subject. He stated:

“Under the improper title of “disappeared,” your correspondence lists names of individuals some of whom have been duly sentenced by courts of law, other persons whose arrests you noted have not been established by the competent authorities, along with other cases being handled by the *Observatoire national des droits de l’Homme*. This amalgam and the circumstantial approximations surrounding it in your document would lead any reader to think that its writers have sought to and succeeded in assembling “info- ammunition” in order to deliberately dramatize the situation of human rights in Algeria” (Human Rights Watch 2003, 37).

Lamamra’s response specifically denied that these cases fall into the category of disappearances (and therefore can be appropriately responded to by human rights norms including ICA) and accuses Human Rights Watch of manipulating the information regarding the human rights situation in Algeria – insinuating inappropriate intervention.

Since domestic remedy for human rights abuses was impossible, and families began to organize to bring their cases before international institutions starting in 1997. Despite the fact that the ONDH was created before the conflict erupted, it seems that from the beginning there was no intention within the government organization to actually investigate any cases of enforced disappearances, nor even to take their claims seriously as the investigations that took place were handed off to the very groups that were being accused of carrying out the crime. In this respect, the ONDH contributed to the informational vacuum regarding enforced disappearances. It kept families wrapped up in the domestic proceedings until these relatives recognized their complaints were not being addressed through the government. The ONDH

certainly did not require the administration to deny accusations of wrong doing in any public manner as the complaints were, in effect, privatized - kept in the private domestic realm - through this mechanism. From 1992 to 1997, state actors within the security services (contacted by individual families or by the ONDH) consistently denied evidence pointing to enforced disappearances (CFDA 2016, 42). This progressively became the tactic of the regime as well.

Algeria moved into the second stage within the spiral model when domestic actors began to create networks and relations to place pressure on the government specifically regarding disappearances through international venues in later 1997 and early 1998 (CFDA 2016, 96-7). Again, the use of photographic information was key for the transmission of information to sympathetic international actors and publicizing the plight of the disappeared, when providing verbal or written accounts was impossible because of a lack of connection to outside actors.

The first international media attention to the issue of the disappeared in Algeria occurred when female family members were photographed protesting disappearances in front of the central post office in Algiers. The group planned to protest during the scheduled presence of international journalists in the capital who were there to report on the ongoing municipal elections. Despite attempts by police forces to confiscate journalists' equipment, photographs were taken of the protests and disseminated through the TAN, contributing to the provision of

information to new actors (Human Rights Watch 2003, 38). These photographs appeared in the international press within days.⁶

It seems that this initial activity caught the attention of Algerian authorities and, sparked a change regarding internal response to disappearances in 1997. The ONDH had been receiving reports from families of disappeared persons since 1992, but it was not until 1997 (according to the president of the ONDH) that the government began cooperating with its own human rights administration (Human Rights Watch 2003, 47). This claim is further supported by the fact that for the first time in 1997, the ONDH's annual report included a numerical breakdown of the responses from the security services regarding disappearance cases (the first time a response was communicated to families by ONDH) (ibid. 50). This indicates that around the same time that international attention to disappearances was beginning, security services began responding to accusations to justify and deny the fate of the disappeared. Security Services also provided the same type of responses to individual inquiries submitted by families (these responses came either as written letters or verbal statements) as they did to the inquiries of the ONDH, always with the same terse, minimal effort. For example, statements such as the individual is "still being sought by security services", "was killed in a confrontation with an unknown armed group", "was released the same day that he was taken into custody", or "was never in custody" (CFDA 2016, 50-51 and throughout). These minimal responses to families are homogenous in their rejection of the idea of responsibility of security service agents.

⁶ Roula Khalaf, "Protesters Seek News of Missing Men in Algeria," *Financial Times*, October 21, 1997; June Ray, "Le mur du silence se fissure en Algérie," *Le Monde Diplomatique*, January 1999.

Algerian activists' first direct attempts at international pressure regarding enforced disappearances were through the UN Human Rights Commission (UNHRC), which is available to Algerian citizens as Algeria has signed and ratified the International Convention on Civil and Political Rights (ICCPR hereafter). The UNHRC's first country report addressing disappearance was issued in August of 1998, condemning the Algerian government for ineffective response to the accusations of widespread human rights abuses, recommending a mechanisms of central registration for all cases of enforced disappearance, as well as requiring that the government provide information to the committee regarding the number of disappearances and the results of domestic investigations undertaken (Concluding Observations, Algeria 1998, 95).

The Algerian regime's complete denial of the occurrence of disappearances was relatively short lived, although various methods of denial (denial that they fall into international jurisdiction, denial that they constitute phenomena subject to the norm etc.,) have continued while the regime has moved forward in the spiral model in other ways. For example, up until the early 2000s when the ONDH was replaced by the *Conseil Nationale Consultative de la Protection et Promotion des Droits de l'Homme* (the National Consultative Council for the Protection and Promotion of Human Rights, CNCPPDH) was established, officials recommended that families apply to the courts, arguing that the courts would carry out their duty of investigation into the disappearances.

In 2001, Minister of the Interior Zerhouni responded to deputies in the parliament, that "in terms of the courts, all complaints on ["disappearances"] have been accepted and logged, and have systematically resulted in the opening of judicial investigations" (Réponse a

l'interpellation 2001). These claims could not be further from the truth: local human rights organizations interviewed by Human Rights Watch in 2003 knew of no cases in which an investigation had been opened by the appropriate judicial actors, and judges have systematically refused to call eye witnesses even when detailed information is provided by families (Human Rights Watch 2003, 47). Cases were habitually closed, no investigations were carried out, and judges claimed lack of evidence. Appeals courts and the Supreme court consistently upheld these decisions (ibid. 47).

Stage Three: Tactical Concessions

In response to the UN Human Rights Committee condemnation in 1998, the Algerian regime issued its first *tactical concessions* regarding human rights norms in general (stage three). This moved the regime into stage three of the spiral model. While simultaneously rejecting an international commission of inquiry on the massacres, the regime did agree to allow a European Parliament Delegation to visit in February 1998, and a UN delegation to visit in the summer of that same year. Activists working on the disappearances took advantage of these occasions to meet with foreign representatives and pass credible information regarding the details and extent of enforced disappearances. This tactic paid off when the head of the UN Delegation team presented a list of 230 cases of enforced disappearances to the government official running the ONDH (Human Rights Watch 2003, 38). The pressure created by international publicity and the communication of hard facts from domestic activists to international observers heightened the pressure on the regime.

By the end of 1998 the Algerian regime had given into another tactical concession, this time specifically regarding disappearances, by creating a national level organization solely

responsible for the collection of information on these cases (Bouteflika, 2003). With offices in the 48 *wilayas*,⁷ this organization was housed under the Ministry of the Interior, and was coupled with another office created under the Ministry of Justice, responsible for the management of legal complaints (CFDA 2016, 97). Human rights organizations and local activists immediately voiced grave reservations regarding the ability or will of these new institutions to address the cases of disappearances in a competent and sincere manner. These offices were effectively charged with investigating members of their parent ministry and the government never clearly communicated to the public how the new institutions functioned (Human Rights Watch 2003, 41). The creation of this dual institution by the government to address disappearances indicates a logic of strategic adaptation on the part of the regime which was willing to make cosmetic changes but the goal of actual problem resolution was obviously lacking.

The government was sending mixed signals to families of the disappeared. While the government put in place an institutional framework for collectively dealing with the complaints of disappearances, high-level public figures continued to deny that most cases could actually be considered enforced disappearances. This demonstrates the fluid nature of the spiral model, and that Algeria (like many other countries) did not move through the stages in precise and clearly delineated phases, but rather with overlapping components of phases manifesting simultaneously (for similarities with other cases see Granzer 1999 on Tunisia and Morocco, and Jetschke 1999 on Indonesia and the Philippines). For example, in 1999 (after the

⁷ Regionally distinct localities similar to counties in the US system.

first tactical concessions) the Minister of the Interior, Abdelmalek Sallal justified cases of enforced disappearances along multiple lines:

“apparently the majority [of cases] that we have responded to are of people who have taken up arms [against the state]. We have never hidden that there were excesses [by Algerian forces]...; the majority of people said to have been disappeared were captured by security forces. We believe that some of them are still in the *maquis* [the insurgent groups fighting the government]. This is the situation of those who are said to have been disappeared” (Algeria Watch 1999).

For his part, the president of the ONDH, Mohamed Kamel Rezzag continued to systematically “denounce international human rights organizations when they issued critical reports on Algeria” even up until the replacement of the ONDH in 2001 (Human Rights Watch 2003, 48).

From Denial of Enforced Disappearances to Strategic Management of the Problem

The success of Abdelaziz Bouteflika in the April 1999 presidential elections brought a change in official policy regarding the civil war in general and towards enforced disappearances in particular.⁸ Bouteflika was famous for his strong performance of foreign minister under the first presidential regime in independent Algeria. He brought to the role extensive prestige and ran on a platform aimed at ending the conflict. There was a distinct shift in official discourse between the statements made prior to the arrival of the new president, and those made by Bouteflika and his officials appointed to deal with enforced disappearances starting in 1999. Bouteflika habitually referred to the number of disappeared as 10,000 (higher than any numbers recognized by a public official to that point). He did not use the prevailing argument that disappearances were attributable to armed group, or runaways, as was typical of other state

⁸ All other presidential candidates dropped out of the elections the night before voting, contesting their independence and arguing that the results had been rigged (Cook 2007, 40-1).

officials. Most importantly, “He did not try to discredit accusations of security-forces responsibility, although he stopped short of accusing them directly” (Human Rights Watch 2003, 41). Activists and relatives were immediately attentive to these changes and hoped it would result in policy change. In his initial year, Bouteflika even worked to establish his credibility within the growing community of relatives, claiming publically on multiple occasions that his nephew was in fact a disappeared person and that he was in ongoing conversation with international organizations regarding best practices for exhumation of bodies from mass graves (for example, Bouteflika 2003).⁹

This rhetoric was an indication that high level regime figures were engaging more fully in the discursive arguments used by activists and relatives. Therefore it is a key indication of the *tactical concessions* phase of the spiral model (and the partial success of the logic of persuasion) since state actors were beginning to use the language and arguments of the human rights community, therefore validating the human rights norms advocated by it. However, government discourse changed again in 2000. Bouteflika was not longer addressing the issue of enforced disappearances directly, nor providing additional information about his previous commitments to follow up on the cases of disappearances (Human Rights Watch 2003, 43).

In 2001 the president transferred the responsibility for cases of disappearances from the now defunct ONDH, to the newly created CNCPPDH. The organization was established with a mandate to determine the truth regarding the cases of enforced disappearances. The

⁹ Interview with La Chaîne Info (Paris), September 12, 1999, translated into English in BBC Monitoring Service: Middle East, September 15, 1999; El-Moudjahid, July 19, 2000, reprinting the text of an interview published the previous day in Le Parisien. There is no evidence among human rights organizations that a member of president Bouteflika’s family was disappeared.

government publically announced that the CNCPPDH would provide the information to the public in a report at the end of its mandate (CFDA 2016, 9). The rhetoric of the appointed president of the new organization, Farouk Ksentini, was once again more promising than that used by past officials. Speaking to a journalist from *El Watan* in 2001 (an Algerian newspaper known to be generally sympathetic to the military), Ksentini stated “My conviction is that the majority of the ‘disappeared’ had nothing to do with armed [insurgent] groups...” and in an interview with Human Rights Watch in November 2002 he stated “I think there are 7,000 to 10,000 cases total, maybe as many as 12,000,” and “made clear he was referring to cases for which the security forces and their allies were responsible” (Human Rights Watch 2003, 15). These statements, made by a public official to international human rights organizations, are important as they demonstrate state actors using the language of human rights norms.

However, in time it became apparent that the CNCPPDH served the same purpose as its predecessor – mainly to provide official letters to families describing the outcome of so called investigations undertaken by security forces. These letters, like those provided by the ONDH before, systematically included contradictory information from that provided in public records and by other institutions on the matter. They rarely included more than a few sentences. The letters consisted of statements such as: “the missing person had been killed in clashes with security forces”, or “the investigation had been unsuccessful”, while no information was provided by security forces regarding the process of investigation, nor the overall outcome of investigations regarding enforced disappearances at a national level (Human Rights Watch 2003, 48). In sum, the results of the CNCPPDH indicate that the executive did not invest the organization with any real investigatory power and therefore it

was unable to provide verifiable information regarding the fate of even one case of enforced disappearance, of the thousands reported to it (Human Rights Watch 2003, 13).

Initial tactical concessions turned out to be another way the regime could manage the problem of enforced disappearances through the use of language and institutions based around the norms of human rights. This is in line with the strategic logic that Risse, Ropp and Sikink contend occurs during the initial stages of the spiral model, in which state actors are not necessarily convinced of the human rights norms but use them to manipulate domestic opponents. They work with the new currency of human rights norms to negotiate legitimacy and hold off pressure for real domestic change.

Tactical concessions by Algerian authorities ended in 2003 when the CNCPPDH submitted its report to the President at the end of its official mandate on March 31 of that year. Despite the fact that Ksentini announced publically that the state run organization had confirmed 6,146 cases of enforced disappearances, he lamented the inability of the organization to determine the outcome of even one case. The results of the report submitted to the president were never made public (as had been originally promised by the regime) (CFDA 2016, 100). The official result of the inquiry, only summarized by Ksentini verbally in a handful of public statements, cleared state actors of responsibility. In an interview given by Ksentini in 2005 he stated:

“enforced disappearances were not ‘a deliberate policy [but should be understood as], as the actions that can be attributed to certain agents of the state that acted in a state of disarray or in response to the high intensity nature of the combat they were engaged in which pushed them to react illicitly and to commit excesses’” (Hamrouch G. 2005).

According to Ksentini, there was no policy of enforced disappearances organized by the state and those cases that are attributable to state forces were merely the result of the high psychological pressure that state agents were subject to in the fight against insurgents. He shifts the blame back toward the insurgents, clearly away from state actors. In particular, when responding to questions of responsibility for the disappearances, Ksentini responded by claiming that the responsibility lies with the state, but that it is a “civil, not a penal” responsibility:

“the State is therefore responsible but not guilty...responsible for those illicit actions of its agents, as it is in the civil code, and therefore the state must provide material reparations for the wrong done to families, if they request it” (ibid.).

In this statement he presented an argument that directly responds to the increasing international pressure regarding the cases of enforced disappearances and individual criminal responsibility. Ksentini concludes state responsibility under *civil law*. His statement delicately avoids the fact that a determination of responsibility under civil law means by default that individual criminal responsibility cannot be claimed (something only possible under penal law), and keeps the conversation squarely in the realm of state responsibility. This is a distinct change from the policies that he himself (and his predecessor in the OHDN) had recommended to this point, namely encouraging families to file penal complaints with the Algerian courts for criminal actions.

Manipulation of Tactical Concessions: Movement Toward Amnesty

Starting in 1999, the Bouteflika regime simultaneously began to move in another direction. The president tested a series of laws which granted amnesty to a progressively wider

group of former insurgents. Then, in 2005, the Bouteflika regime widened amnesty to include state actors as well. Through the Charter for National Reconciliation, proposed and passed as law in parliament and then later as a national referendum, amnesty was granted to *state* agents and civilians working in coordination with them (for example, village guards). Furthermore, the charter rendered criticism or denigration of the state's activity during the civil war, either in verbal or published form, punishable by prison and heavy fines (Journal Officiel 2006, 6-7).

Table 4 includes all legislation passed regarding crimes carried out during the civil war, showing that before August 2005 President Bouteflika's policies of clemency had only been extended to former insurgents, and not to state officials (Amnesty International 2009, 12-14).

Between 2003 (when the results of the CNCPPDH inquiry on enforced disappearances were communicated to the President Bouteflika) and 2005 when the subsequent legislation meant to establish "peace and national reconciliation" was initiated, there was a shift in the way that Ksentini and the Bouteflika administration thought about responsibility for human rights abuses in general, and enforced disappearances in particular. Apparently, the findings of the CNCPPDH report on

Table 4. Algerian Legislation Regarding Crimes Committed During Civil War

Date	Content
07/99	Civil Harmony Law: passed after approval by the executive, and was passed by the Parliament and the Senate
09/99	National referendum on Civil Harmony Law – passed
01/00	Presidential Decree 2000-03: “granted amnesty and blanket impunity from judicial prosecution without any exclusion clauses to ‘persons who belonged to organizations which decided voluntarily and spontaneously to put an end to acts of violence’ and surrender themselves to the authorities,” (meaning insurgents) (12). Approximately 4,500 individuals benefited from this amnesty law during the original period of applicability (six months). The number of people who benefited after this period of time is unknown as it was not documented by authorities.
08/05	The Charter for National Reconciliation: “outlined a framework to bring closure to the internal conflict...proposed measures to exempt from prosecution current and former members of armed groups, or offer them clemency, for those already serving prison sentences... absolved security forces and state-armed militias from responsibility for committing human rights violations during the internal conflict by stating that they had acted in the interest of the country.” The Charter also denied the responsibility of security forces for thousands of disappearances, despite promised compensation and recognition as “victims of the national tragedy,” for relatives (13). The charter was vague with little detail about the actual proposal.
09/05	National Referendum approving the Charter - passed
02/06	Implementing legislation outlined, in detail, the application of the charter. It bypassed “...Parliamentary debate since [Parliament] was not in session at the time the ordinance was adopted, according to article 124 of the Algerian constitution” (13; <i>Journal Officiel</i> , 2006). ¹ The legislation broadened the charter in three respects: provided “immunity from prosecution for members of armed group that committed abuses of a collective nature or rape...provided blanket immunity from prosecution for security forces and state-armed militias despite the fact that the Charter itself did not explicitly include such provisions.” (Amnesty International 2009, 13). Also, the legislation initiated the release of those who had been already detained or imprisoned, except for those guilty of “collective killings, rape and bomb attacks”, although there is evidence to indicate that there was no actual investigation carried out to differentiate for release those who had carried out which crimes (14). The resulting legislation denies “victims the right to remedy for serious human rights violations, in contravention to Article 8 of the Universal Declaration of Human Rights and Article 2 of the ICCPR, to which Algeria is a state party” (14). Approximately 2,200 individuals previously charged, convicted and imprisoned were released. Others were released thereafter, with no documentation of decision-making procedure regarding releases. Amnesty International has documented multiple cases where individuals should have been released but were not (14).

¹ The Charter itself has no legal value, as it was not written by the legislature. The implementing legislation rendered it legal (Interview 31).

enforced disappearances were revelatory enough to merit inclusion of state forces in the blanket amnesty law proposed in 2005.

Ksentini, who had already come out publically as being in support of a national amnesty law that would be introduced in August of that year, explicitly responds to questioning regarding individual criminal responsibility. The reporter began the interview asking how Ksentini responds to the claims by activists that disappearances are a crime against humanity and therefore, according to international law, should not fall under the jurisdiction of the proposed national amnesty law. Ksentini's reply draws on clear denial of jurisdiction. He argues that the notion of "crimes against humanity" does not exist in Algerian national law and therefore is irrelevant (Hamrouch G., 2005). Between 2003 and 2005 the Bouteflika administration and Ksentini (the president of the human rights commission appointed by the president) have clearly shifted to an argumentation that highlights domestic (not international) jurisdiction for the determination of amnesty. Their argument therefore rejects the notion of individual criminal accountability for these crimes. Since 2005 this argumentation has served as the bedrock for the administration's narrative regarding crimes carried out during the civil war.

To summarize, the Algerian regime started at first in a period of extensive repression while the war was ongoing (1992-1998). Then, because of the effects of international pressure, the regime moved to denial of abuses, denial of international jurisdiction regarding abuses, and rejection of the argument that these abuses are within the category of crimes to which ICA is applicable (1998-2005). The spiral model

explains the regime response to ICA invoked in relation to enforced disappearances and other human rights violations committed during the civil war.

Since 2005 Algeria has clearly stagnated in terms of the spiral model. The concession that had been made in the early 2000s have resulted in no substantive movement forward in terms of illuminating the fate of the disappeared, or effective investigation and prosecution of those responsible. Instead, concessions simply served to provide information to the Algerian regime about the extent of abuses. I contend that the information gathered by the CNCPPDH informed the Bouteflika administration's decision about the necessity to further block demands for individual criminal accountability for these crimes.

The Algerian regime has been able to use the tactical concessions of the early 2000s to their advantage, to ultimately close off possible avenues for further advancement in terms of discursive argumentation and entrapment of the regime within its own rhetoric (Risse, Ropp & Sikkink 1999, 27). This has occurred in three distinct ways.

First, the regime passed legislation within the national referendum that offered reparation to families of the disappeared. The CNCPPDH concluded its work on the subject with a proposal of monetary compensation for the families of victims, under the condition that these families sign documents declaring the official death of their family member and renouncing their right to seek further redress. After the passage of the Charter (2005) the parliament passed implementing legislation (*textes d'applications*), released in early 2006 that made clear that the government had opted for a general

amnesty. The law had a number of implications that deserve attention (Journal Officiel, 2006).^{11 12}

Second, the regime halted the further evolution of the spiral model (in terms of pulling the regime into discursive argumentation) by claiming that the Algerian people democratically chose to adopt the national reconciliation charter through referendum. In 2006 after the charter was proposed to (and passed by) Parliament, it was passed in a national referendum. This logic ultimately serves as a reason for external actors to

¹¹ The Charter itself has no legal value, as it was not written by the legislature. The implementing legislation rendered it legal (Interview 31).

¹² First, although the official texts exclude those who committed the worst acts of violence (massacres, bombings, rapes), they were nonetheless to receive reduced sentence. In practice, it is not clear that this distinction was made and multiple activists that I interviewed argued that there has been no distinction, with the amnesty being applied fully to all who initiated the necessary procedures. Second, judicial proceedings would be dropped for those who had abandoned violence of their own accord and surrendered to authorities, including sentences passed in absentia. A distinction was made between those who had supported terrorism, whose civil rights were to be restored, and those who “continued to ‘exploit’ Islam” who were still barred from political participation and other rights (Joffé 2008, 219). This amounted to the public sanctioning of previously committed violent guerrilla activity but punishment of the use of religion in political affairs, indicating the official intention to overlook the use of violence against the state but reprimand the political use of religion. Furthermore, the implementing legislation made criticism or denigration of the state’s activity during the civil war, either in verbal or published form, punishable by prison and heavy fines (Journal Officiel 2006, 6-7). The third chapter of the enabling legislation dealt simultaneously with families of former guerillas killed by security forces and those of the disappeared, equating the two categories of victims despite the fact that many families (and the major human rights organizations) dispute this characterization. Families of former insurgents (who fought against the government) received compensation, legal protection from discrimination and the right to resume professional positions from which they were dismissed. In addition to the previous agreement of compensation provided to families of the disappeared, those families were now offered a legal process by which they could declare the disappeared person deceased, through a police investigation and submission of results to the court. This was meant to resolve the legal limbo in which many families found themselves, but also convinced some that it cut off further possibility of legal redress in international venues, as it required families to accept the charter.¹³ However, like the previous accord, the acceptance of a death certificate required families to renounce further action on the case of the disappeared person, implying that the return to normalcy would be at the expense of any semblance of justice. Many families remain unwilling to take these steps, although some have. There is no data available for the number of families dealing with enforced disappearances who have accepted monetary compensation.¹³ However, according to my participant observation with activists, some did initially accept compensation. The charter did not address the thousands of families of individuals kidnapped or killed by insurgents.

abstain from extensive pressure on the Algerian regime. Ultimately, it legitimizes the government's response to the civil war. The argument that Algerians democratically chose to adopt the amnesty law obscures the problematic aspects of the referendum. The referendum in 2005 (determining the blanket amnesty for agents of the state and civilians helping them), was passed with almost no domestic discussion of its contents, and outright censorship of the human rights organizations that were condemning it (Ammour 2012, 24). Furthermore, the question put on the ballot obscured the nature of the decision, reading: "Do you agree with the proposed project on the Charter for Peace and National Reconciliation?" It provided no information about what the proposed charter entailed and allowed only a "yes" or "no" answer (Amnesty International 2009, 62). Finally, as was noted in the journalistic accounts at the time: "it was very easy for poll watchers to tell how people voted" and therefore all the more socially unacceptable to vote no to whatever "reconciliation" meant. "Blue ballots, which meant yes, could easily be seen through the white envelopes they were tucked into before being dropped into a ballot box. The no ballots were white" (Slackman 2005). These points demonstrate that there was little that can actually be considered democratic about the 2005 referendum.

The third method that the regime has used to inhibit further progress in the spiral model is through its consistent and ongoing emphasis on the threat of terrorism. In reality this policy emphasizes another conflicting international norm (abhorrence of, and the necessity to combat with brute force all forms of terrorism), as a tactic to relieve pressure to conform to norms regarding human rights (and democratization). I

discuss the important implications of this for both Algeria and Turkey in the concluding chapter.

Finally, the lack of externally apparent divisions within the Algerian regime since the civil war period, has strengthened the status quo in the country. As will be discussed more fully in the final chapter of this dissertation, from 1990 until 2015, “General Toufik” Mohammed Mediene served as the head of the DRS, the most powerful body in the Algerian security apparatus.¹³ Although he has now been replaced, the military and security apparatus’ role has been preserved as governors of Algerian political life, resulting in an absence of counter-elites as has emerged in Turkey. This section has demonstrated Algeria’s progress in the spiral model since the end of the civil war. The next section will assess the viability of further advancement of the ICA norm.

Support for ICA Among Norm Entrepreneurs in Algeria

Given the fact that Algeria is in the third stage of the spiral model, one of the major elements that helps regimes move beyond this stage is growth of domestic human rights networks. The following section presents data collected through fieldwork demonstrating the level of support for the ICA norm among key grass-roots actors. There are a number of initial indications that the ICA norm has impacted the domestic human rights movement. First, a review of the activist organizations’ websites demonstrates the use of language referring explicitly to individual criminal accountability. For example, appearing on the website of *SOS Disparu(e)s* is a downloadable PDF called the “Alternative Charter for Truth, Peace, and Justice” which

¹³ <http://www.bbc.com/news/world-africa-34268565> Accessed May 16, 2016.

was written by the three major organizations (SOS Disparu(e)s, Somoud and Djazaïrouna), in response to the Charter passed in 2005 establishing amnesty. Among other things, the alternative charter calls explicitly for the establishment of “individual criminal responsibility” for government actors and former insurgents, whether or not they have benefited from the current amnesty. It calls for “immediate, exhaustive and impartial investigations of every allegation of extrajudicial killing, torture, rape and enforced disappearance” to determine the responsibility of the “commander, instigator, author or accomplice” to these crimes, whether they are state actors or those working with the state” (Charte Alternative 2010, 2).

This indicates an intentional integration of the ICA norm into the discourse of the major local organizations working on human rights and transition from the civil war. However, from these primary sources alone it is not immediately clear whether this norm strongly impacts the perspective of these actors, or if this language is more of a minor addition perhaps at the encouragement of international organizations or actors, or simply in a process of imitating the language used by other organizations. Are relatives of disappeared persons speaking in terms of ICA as well as activists? Is this idea that is embedded in the alternative charter present in their everyday conversation and organizational activities? To what extent do the organizational resources and energy go toward promoting ICA, and in what ways? This section attempts to answer these questions through an analysis of qualitative interview data carried out during fieldwork in Algeria in the end of 2014, beginning of 2015.

The major questions I attempted to answer through analysis of this data fall into two categories: 1. Individual Criminal Accountability: what is the level of support of

the ICA norm among relatives, human rights activist and legal professionals? Is this an often mentioned goal throughout the interviews? Do they reject outright the idea of state responsibility or is state responsibility combined with ICA?; 2. Impact of the ICA norm, or emergence: Is the presence of the ICA norm having an impact on the local domestic context in the fight for human rights? Previous literature has indicated that the appearance of the ICA norm has often been connected to the use of (Lessa 2013, 145) legal arguments, particularly in contexts in which activists are forced to maneuver around domestic amnesty laws (Michel & Sikkink 2013 897). Do we see these types of activities beginning in Algeria? Are these kinds of local networks known to facilitate domestic litigation present or forming in Algeria?

Individual Criminal Accountability in Algeria

An initial numerical analysis of data demonstrates that the ICA norm is present in the discourse of both relatives and professionals in Algeria (human rights activists and lawyers).¹⁴ Sixty-seven percent of all interviews included at least one supportive mention of the theme of individual criminal responsibility for enforced disappearances (twenty-eight of the forty-two Algerian interviews). This percentage is slightly lower when looking only at interviews with relatives, but still shows up in the majority of these exchanges (64%). For example, one woman from Oran, in her fifties, whose husband was disappeared explained, “For me justice would be that [those responsible] would be judged...to have the truth. We suffer in silence.” She continued saying, “there must be

¹⁴ For activists and legal professionals I have chosen to report only the number of the interview here (as opposed to the date, location or gender of the person interviewed) so as to protect the identities of those individuals interviewed. The number of people working on human rights and enforced disappearances are few enough that the combination of location and gender could easily identify a person to someone familiar with these organizations.

punishment, there must be justice rendered by the state, a legal justice before a tribunal.”

A little later she exclaimed, “these are criminals who are currently free but they took our loved ones!” (Interview 24). A mother of a disappeared man in her seventies similarly explained that true justice would be “to follow these people and attack them in court...” She went on to explain that she could not accept a solution similar to that set up in South Africa, focusing on amnesty for admission of crimes because “they must pay. They must tell the truth before a judge [or in a tribunal]...” (Interview 25). These statements are representative of the ongoing theme mentioned by relatives highlighting individual criminal responsibility in the majority of interviews (67%).

Among professionals the percentage of interviews mentioning individual criminal responsibility was higher than among relatives (75%). One young activist who provides psychiatric assistance to families through local organizations explained:

“Justice cannot be negotiated. We cannot pardon, the state cannot pardon. [This person] was of age [when he/she committed these acts], and responsible for his/her actions. There are consequences that we cannot avoid. He committed these crimes and so he should be punished” (Interview 27).

Another young female activist explained that she is

“completely against [amnesty for admission of and remorse for crimes]...how can one forgive? You were conscious [of your actions], the fact that you have admitted something doesn’t change anything. He must be judged. The [Algerian National Reconciliation] Charter, for example, I find unjust. Pardoning to preserve peace, after so much blood...[shakes her head]” (Interview 29).

Similar to the statements made by relatives, these quotes are representative of a larger trend in the interviews with activists, in which professionals clearly advocate

individual criminal accountability for these crimes. This simple numerical analysis provides initial support for the idea that support for the norm is robust in both groups, but stronger among those most closely associated with NGOs (linked into TANs), as one would expect.

Justification for statements indicating support for ICA fell into a number of categories. Many individuals referred to ICA as a way to combat impunity. In the words of a young woman working with the rights organizations, “[crimes and violence] repeat themselves if we do not punish them” (Interview 15). Others argued that trials would help to re-establish or improve the rule of law or the confidence of people in state institutions.

A young activist working with the organizations representing families explained:

“it is true that at times we prefer truth over justice (like in South Africa), but I find that one cannot replace an impartial justice because it assures non-repetition of crimes, to counter impunity. The truth is better than nothing but it cannot replace the process of justice” (Interview 32).

The reference to South Africa here is a strong indicator of the existence and internalization of the ICA norm. Some interviewees mentioned the importance of trials for their public nature, either on the national or international levels. A female activist explained that “it’s the judgment that is important – publicly and with punishment. Without punishment, personally I cannot accept [it], it’s illogical” (Interview 15). The middle-aged sister of a man who had been disappeared explained in similar terms:

“No, I am not okay [with amnesty for admission of crimes]... Tell us the truth – we got an amnesty [law] that works for the state and its double

agents...If only they would tell the truth, and liberate my brother so we can bring them before the court. They [the perpetrators] are the ones that should be brought to court.”

Later she elaborated, saying that holding high ranked officials responsible is

“still very important. Even the leaders of the FIS¹⁵ too – they pushed people to make war – they are the ones that created this *fitna*.¹⁶ On both sides. Even abroad, they should be judged, if we really are talking about justice, it’s that.”

This last quote shows how justice was often linked to the goal of truth. Yet, truth revelation does not serve to extinguish the desire for justice that involves punishment. Many individuals emphasized the need to punish for wrongdoing. Some of the individuals interviewed indicated that justice should include individual criminal accountability for other reasons – to allow the families an opportunity meet with their oppressors face to face (Interview 27); for the rehabilitation process of relatives (Interview 27; Interview 33); or as a way to combat destabilization of the country (Interview 13).

It is important to note that when pressed for information about who should be prosecuted, relatives most often mentioned members of the military (not civilian leaders), who they believe carried out the crimes and ordered them. When names were given they were those of military officials (most often Khaled Nezzar, who served as ground forces commander and member of the High Council of State (the ruling body)

¹⁵ This statement supports the idea of individual criminal accountability to an even greater extent given the fact that the interview subject was a member of a family that is still strongly supportive of the original motives of the insurgents during the civil war period. The family was one of two families I encountered that still call themselves members of the FIS. Calling for prosecution of insurgent leaders who committed atrocities indicates a strong adherence to the norm.

¹⁶ The Arabic word *fitna* means chaos or disorder, and is usually used in the religious context to indicate the disorder that comes about from departure from the religion.

during the civil war). Additionally, many families know the identities of the mid-level and low-level actors who carried out the orders to take their relatives.¹⁷ For example, the former Mayor of Relizane, El-Hadj Fergane “remains at liberty despite the testimony of numerous local relatives of ‘disappeared’ persons that Fergane was himself present at, and often directing, the arrests of persons who then ‘disappeared’” (Human Rights Watch 2003, 15).¹⁸ ¹⁹This theme indicates that relatives generally believe that the responsibility for these abuses lies with the “ruling” military security establishment, and not with the “governing” civilian establishment (to use Cook’s terminology, 2007). In fact, not one individual in my interviews named a civilian leader. This indicates that, were a truly opposition civilian government to come to power that is willing to curtail the power of the military, human rights trials would be feasible. Division between the civilian government and the military could lead to trials.

I coded interviews as non-support when individuals clearly did not support ICA, or in which they were ambiguous about how they defined justice were coded as nonsupport. These people also displayed a variety of justifications. Statements of this kind were found in 33% of all interviews. Some emphasized that justice could only occur in the hereafter (Interview 1; Interview 14; Interview 38); others argued that truth

¹⁷ In most cases of enforced disappearance (including both Algeria and Turkey), the actual act is usually ordered by an official (civilian or military), then the order is transmitted through a hierarchy of personnel (which I would consider mid-level), to be eventually carried out by either troops on the ground or local informants (which I consider low-level actors). It is worth mentioning that in both countries relatives generally presented information that supported this division of labor.

¹⁸ Additionally, there are three ongoing trials in foreign courts that also target former military generals and village guards. See below.

¹⁹ In my own interviews multiple interview subjects indicated that they know the identities of, or even personally know, those who had taken their relatives.

is more important to them than justice, and when pressed for how they understood justice, or how justice could be enacted, they returned to importance of truth revelation (Interview 14; Interview 25; Interview 40; Interview 17). Some individuals felt that however preferable individual criminal accountability would be, in the context of Algeria they do not believe it is possible to know the identities of perpetrators, and therefore trials are not feasible (Interview 23; Interview 41). Finally, some individuals indicated that they had forgiven the perpetrators or that they wished to forgo trials for benevolent reasons. One individual indicated that trials could not punish the perpetrators enough, and that they deserved physical punishment (Interview 34). One individual indicated that those responsible were already dead (Interview # 28).

Given the process of ICA norm transmission presented by Sikkink (2011), and its emphasis on an overall shift from state accountability for crimes, to individual accountability, it is interesting to note that only one interviewee suggested that the state is broadly responsible for these crimes, without also mentioning the need for individual criminal accountability of perpetrators (Interview 41). The question design, explained in detail in the methods chapter and appendix I, was prepared to allow individuals to speak freely about their understanding of justice, so as not to encourage one type of response. In sum, these results indicate that the majority of professionals working on the cases of enforced disappearance, as well as the majority of relatives interviewed, conceptualize justice as encompassing individual criminal accountability. There is little evidence to indicate that justice is understood most concretely in terms of state responsibility.

These findings provide initial support for my contention that the ICA norm is empowered in Algeria. Empowerment here means “prescriptions embodied in [the ICA] norm [have] become, through changes in discourse or behavior, a focus of domestic political attention or debate” (Checkel 1999, 87-8). These interview excerpts, which are representative of the larger set of interview findings, demonstrate that the language used by activists and relatives has been impacted by the ICA norm and that when asked to describe the way that justice should be carried out, 2/3 of relatives, and 3/4 of activists and legal professionals independently mentioned individual criminal accountability. The intersubjective meaning of justice in Algeria among these groups includes, to a great extent, individual criminal accountability. Although Checkel emphasizes elite behavior, he recognizes the “‘bottom-up’ process” in which “nonstate actors and policy networks are united in their support for international norms,” and in which these networks work toward coercing state officials and elites to change their discourse and behavior (88).²⁰ This second element - intentional activities to change the discourse and behavior of state officials through TAN activity - represents one of the most important aspects of movement beyond stage three in the spiral model.

Domestic Activity Encouraging the ICA Norm

The second question that this section will address regarding the domestic context in Algeria is whether there is domestic activity occurring that is particularly aimed at advancing the ICA norm. It is apparent from the data analyzed above that the ICA norm is present and empowered among local grass roots actors. It is influencing

²⁰ Checkel (1999) also outlines a “top-down” approach, in which normative change results from elite learning.

their language and the way that they advocate for the rights of relatives and victims of the conflict in the 1990s. Is the ICA norm impacting the local domestic context in the fight for human rights in more concrete ways?

Previous literature has indicated that the appearance of the ICA norm has often been connected to the use of novel legal arguments, particularly in contexts in which activists are forced to maneuver around domestic amnesty laws (Michel & Sikkink 2013, 897; Lessa 2013, 145). My interviews indicate that local organizations in Algeria have been active in the cases which are being pursued abroad (in France and Geneva) against former military and civilian officials for crimes committed during the 1990s (Interview 41, October 20 2015, Algiers). These cases are being brought in two separate jurisdictions: the first, by dual French/Algerian citizens in French courts, against the former mayor of Relizane²¹ (a mid-sized city in Western Algeria that experienced some of the most brutal massacres of the war outside of the capital region); and through Swiss courts upon universal jurisdiction, against former general Khaled Nezzar.¹

There are also other indications that organizations are attempting to pursue novel legal paths in Algeria. Particularly, to tackle the amnesty law through the use of Algeria's international convention commitments. *SOS Disparu(e)s* has for two years been working on a new project, aimed particularly at remedying the lack of legal expertise among Algerian lawyers regarding the relations between international law

²¹ Relizane is an example of the phenomenon that occurred in Algeria (and Turkey), where civilian defense groups were armed by the military to fight insurgents. In effect, the military's authority and power was extended to self-formed civilian groups willing to fight insurgents. There were extensive abuses committed by these groups against civilians through racketeering and they are implicated in many cases of enforced disappearances (CFDA 2016).

and Algerian commitments to international legal tools. As one activists explained, this is a

“long term project. [We provide] training for lawyers here regarding the charter and [its inconsistencies with] international law. [Those who come are] volunteer lawyers and jurists (those who were trained in law, but do not practice). The goal is that [when they go] before Algerian tribunals, they know the international instruments and conventions signed by Algeria. [The training] is to habituate the judges and the jury, and to help the lawyers to better construct their arguments before the court” (Interview 31).

In particular, lawyers are meant to use this training to “introduce the idea [to judges that they argue cases in front of] that one must work off of the jurisprudence of international conventions in our national courts” (Interview 32).

One of the lawyers who has benefited from these trainings explained in further detail the novel legal argumentation that the organization is working to advance, namely, recognition in national courts of what is stated in the constitution: Article 28 “of the Algerian constitution renders conventions signed by Algeria, superior to national law” (Interview 32). This point is important because it is a way that the courts can be used legally to circumvent the amnesty law, which currently prohibits cases regarding violations from the conflict in the 1990s, as well as written or spoken accusations against state actors. In fact, in 2010, a lawyer first argued (and won) the preeminence of international law over domestic law in front of a national court, and received an acquittal of charges, based on the recognition of the judge that international conventions that Algeria has signed, trump domestic law (Interview 30; Interview 5). When explaining the achievement, my interview subjects emphasized that this argument has been made previously before domestic judges, although they have never

ruled in favor of recognizing the preeminence of international law. The argument is seen as a legal catch that could convince some judges to begin a larger process of applying international law (in any and all domains), where it conflicts with domestic law. The importance of this legal catch does not seem to be lost on the Algerian government which is in the process of writing a new constitution that would incorporate the 2006 Charter (and its application texts) as constitutional law, effectively closing this legal loop hole that could be currently used to argue against the charter before national courts.

The legal trainings that are ongoing by *SOS Disparu(e)s* are essentially working to fill the gap that is currently present in the Algerian legal context in both knowledge and practice. Training in international law is unevenly covered in Algerian law school curriculum. Of those individuals interviewed who have attended law school and were practicing either as lawyers or jurists, I found that their exposure to international law (regarding any topic, not just human rights) varied from none to minimal (one class during their education) and seemed to change depending on the whim of those creating the curriculum at a given moment. All of these professionals had received their training within the post 2000 period and indicated that international law regarding any topic was at best partially covered in their courses. Human rights laws did not seem to figure in any of their training in domestic Algerian programs. One lawyer explained,

“At first I thought that we had received a good education. But I understood when I went abroad (to Strasbourg, France), that we had neither been trained in common law, nor in private law. We had been trained in legal theory...an archaic method which is not up to date with practice. In Strasbourg I was trained in international law and the mechanisms of protection and techniques of legal writing” (Interview 5).

Having attended the trainings put on locally, this legal expert indicated that they had covered “information that was not theoretical” but practical, teaching the participants how to, for example, “write urgent action requests” to be sent to the UN Human Rights Council when violations occur (Interview 5). It seems that these trainings target two skill sets: knowledge of international law for argument before the national courts, and knowledge of the processes used in international IGOs (i.g. submission of urgent action claims). In sum, the legal professionals working in the human rights field and particularly with the organization dealing with families of the disappeared have recognized the lack of expertise regarding international law among their professional colleagues, and see this as an important area to remedy in order to reach their long term goals.

The Legal Complex in Algeria

“[T]he legal complex denotes a cluster of legal actors [from various different legal occupations] related to each other in dynamic structures and constituted and reconstituted through a variety of processes...in relation to a given issue” (Karpik and Halliday 2011, 220-1). First observed through their role in the constitution of political liberalism in the United States and a number of Western European countries, new studies have branched out to examine the role of the legal complex in non-western contexts, and around issues that vary dramatically depending on the given country (222). For our purposes here, the legal complex is a useful heuristic device to examine the state of the legal profession in relation to human rights and international human rights law, in Algeria. The ICA norm, which in itself encourages legal approaches to

post-conflict processes,²² is currently empowered in local advocacy and victims groups regarding the crimes committed during the 1990s.

The legal complex allows us to examine (and compare to other cases, such as Turkey) the state of the legal arena today, in terms of the development of tools and processes that might lead to (or away from) integration of the ICA norm into the domestic legal system. It could also be thought of as (a dynamic and complex) repertoire that has been used in other contexts and is pursued as a sort of guide, based on the processes that other post-conflict or transitional justice cases have gone through (Tilly 1986, 2). The fact that *SOS Disparu(e)s* has recognized the need to increase education among legal professionals around these issues indicates a desire to replicate this repertoire.

Currently in Algeria, the legal complex is weak. The professional groups mentioned in previous work on the legal complex in other countries include lawyers, jurists (legal experts not practicing law as lawyers), legal academics, think-tanks with researchers working on legal issues, judges, prosecutors, and civil servants. From participant observations and interviews, I conclude that connections between victims' organizations and lawyers are the only relations currently existing and they are still weak. Although there are some strong connections with habitual exchanges of information and various types of aid, this occurs only between a handful of lawyers and these associations. There are even fewer domestic (or quasi-domestic) academics producing work that is being used or cited by domestic actors, or working to facilitate

²² As opposed to, for example, truth commission, which focus on the revealing of details about human rights abuses, or establishing a common narrative.

the work of organizations in documentation and analysis. According to interview data from one of the organization activists, there are some lawyers who are interested in the active pursuit of additional legal tools (many of whom are participating in the trainings), but

“there is no one [interested] among the judges. They are scared, or they don’t care. If the government decided to take a step [in the direction of recognizing international law, for example], they would follow, but they will not do it on their own. Because, if a judge speaks about human rights he will be dismissed – sent to the south” (Interview 31).

This statement indicates the fact that human rights activists in Algeria also believe that if there were a change in power to counter-elites, a process similar to what occurred in Turkey might be possible in Algeria. According to one interviewee very active in the Algerian legal complex, there is interest among law students, as was demonstrated when a student group invited one of the legal experts to speak at their university recently on the lawyer’s experience before the court (arguing successfully for the primacy of international law). However, the bar association of the same region prohibited the lawyer from presenting to the law students (Interview 5). Similarly, I found no indication that prosecutors and civil servants are active with the human rights associations during the three months I spent in Algeria, during interviews or through participant observation.

Conclusions

Through the analysis at the beginning of this chapter I outlined the regime’s response to the ICA norm since the early stages of repression. Next, the chapter provided an overview of the domestic support of the ICA norm among key grass roots groups. It is apparent that Algeria has made it to stage three in the spiral model. If it is

the case that Turkey can also be placed within the *tactical concessions* stage of the model (as I will argue in the next chapter), then it is surprising that the two cases diverged in 2008 in terms of the ICA norm (as Turkey began to see the opening of a series of domestic human rights trials). Although other theories within the literature claim to explain the emergence of trials, I will conclude the chapter by showing that to understand this most recent period in Turkish history, it is necessary to examine the shifting power among elite actors. Similarly, the fact that power has remained solidly within the control of the military establishment in Algeria, helps to explain why trials have not been able to emerge in that context. No counter elites have been able to weaken the legitimacy of the Algerian military and security apparatus that has maintained control over the country since the military coup in 1992.

CHAPTER SIX
TURKEY'S PLACE IN THE SPIRAL MODEL AND EXPLANATIONS FOR
DOMESTIC TRIALS

Between 2008 and 2016 Turkey witnessed indictments and subsequent trial proceedings in more than a dozen legal cases brought against current and former members of the military, for human rights abuses carried out during the campaign against the PKK in the 1990s. These trials focus on the individual criminal accountability of members of the military for enforced disappearances and extrajudicial killings from that period. In early 2016, one of these cases has been definitively closed, with an acquittal of the defendants, while 7 remain in trial proceedings in lower courts, three are going through appeals and an additional three are currently being examined by the Constitutional Court.

In this chapter I argue that according to the literature on the domestic impact of international human rights in Turkey, the country is in the third stage of the spiral model (demonstrating evidence of *repression*, *denial*, and *tactical concessions*). Although it crept into the *prescriptive status* stage in terms of other human rights norms between 2000 and 2010, when looking specifically at the ICA norm, no change occurred until 2008 when trials began to be opened. Furthermore, as I will show, the legitimization of the ICA norm was accomplished through anti-democratic behavior which came to a head in what I will call a series of three “coup trials” (2007-2013), while the ruling government

has experienced an authoritarian turn. Throughout this time period Turkey has demonstrated repression and denial in multiple forms.

Various scholars have already analyzed Turkey in terms of the applicability of the spiral model, thereby providing an additional foundation for the analysis presented here. According to Çizre (2001), Turkey was simultaneously in a period of repression and denial from the 1980s through 1995. Repression dramatically increased with the military coup in 1980 and began to garner international attention slowly, as the domestic human rights organizations formed out of necessity, to document abuses and defend victims of the military regime (Çali 2007, Tezcür 2015). The repression period (in the strict sense of the spiral model - which is characterized by a lack of information regarding abuses available to the outside world), was rather short lived in Turkey (early 1980s). Abuses of the military regime were publicized particularly by the waves of asylum seekers traveling to European countries and by the end of the 1980s domestic human rights organizations had established contacts with IGOs, NGOs and regional organizations that facilitated the recording and monitoring of abuses (Çali 2007, 222). By 1985 the European Commission had begun to set material incentives for Turkey to “normalize” its relations with the European community, and withheld 600 million dollars in ECU aid from Turkey after the military coup - which was not released until 1999, despite the return to electoral democracy in 1983 (Smith 2007, 255).

It seems that the regime moved into a second stage sometimes between 1987 and 1989. This time period was characterized simultaneously by *denial* of abuses and *tactical concessions* (with ongoing repression particularly in the Kurdish majority southeast regions). The period began when the president, Turgut Özal, decided to accept the

jurisdiction of the European Court of Human Rights and submit a formal application for accession to the European Union (Smith 2007, 255). This was an important decision because it directly opened Turkey to international criticism and scrutiny regarding its human rights record, but also according to Turkmen (2007), Özal's decision was in fact directly in response to "the irreversible process of the internationalization of the human rights issue" and the material consequences that Turkey was already feeling through the halted Association Agreement (225). Just after the beginning of this tactical concessions phase regarding human rights abuses conducted in the early 1980s, the military opened its largest campaign against Kurdish insurgents. It would last through the 1990s. The abuse of enforced disappearances was, in effect, in its own stage of *repression* in terms of the spiral model during this time since it was impossible to gather reliable and extensive information regarding these abuses so as to transmit it to international actors.

Local level actors started pressuring the Turkish government for greater adherence to the normative framework outlined for progress in accession to the European Union. For example, in 1992, the Turkish Constitutional Court issued a ruling arguing "that Turkey was obliged to bring domestic law into conformity with the [European] Convention and other international agreements, at least somewhat in response to recent anti-terrorism legislation that "further constricted civil rights" (Smith 2007, 264-6).

The regime initiated *Tactical Concessions* in other areas as well. For example the government established a Parliamentary Commission on Human Rights in 1990, a State Ministry of Human Rights in 1991, and a Coordinating High Commission of Human Rights to oversee coordination between various ministries on human rights policies, in

1997 (Arat 2007, 7-8). The establishment of these organizations mimics those established in Algeria in a number of ways. Human rights groups were not consulted and “the mandate of these councils gives the power to investigate human rights violations to the same agencies that allegedly violate[d] them, and therefore raise[s] serious questions about the impartiality of these agencies” (Çali 2007, 230). The establishment of these bodies was an attempt by the regime to create domestic organizations focusing on human rights so as to increase regime legitimacy in the international context. However, the ultimate intent of the government seems to have been to monitor those organizations to assure that they remain in line with regime goals. Like Algeria, a strategic and instrumental logic dominates the regime’s response to accusations of human rights violations.

At the same time, the regime has denied human rights norms on a number of levels (denial of their recognition, denial of their applicability to the Turkish case etc.). In the 1990s and early 2000s authorities regularly “characterize[ed] human rights movements as a marriage of ‘internal traitors’ with ‘international enemies’ and maintained a skeptical and suspicious attitude toward” domestic human rights organizations (Çali 223). This suspicion of domestic organizations is supported by judicial willingness to compromise basic rights, for example in 2003 when the headquarters of IHD (one of Turkey’s founding human rights organizations) was raided by police and all documents, computers and equipment confiscated (Çali 2007, 298). Some scholars point to the fact that multiple political ideologies hold significant sway in Turkey. Conservative nationalists view democratization as an obstacle to the ability to effectively fight “religious reactionism (*irtica*) and separatist terror” to the point that

human rights and European accession in general “turned into instruments to produce a politically correct language, rituals, gestures and symbols in public life” as opposed to behavioral changes and adherence to the normative values associated with them (Cizre 2001, 63). The instrumental use of this human rights language is typical of strategic adaptation and belies an interpretation that suggests there has been any genuine adoption of norms.

Tactical Concessions

Cizre (2001), places the transition from *denial* to *tactical concessions* in 1995 particularly because of the signing of the Customs Union Protocol with the European Union which signaled seriousness by the Turkish regime to work toward the requirements set out two years earlier in the Copenhagen criteria. The Criteria would require the establishment of “complete freedom of expression, human rights, respect for and protection of minorities, a non-intervening military in politics, and an efficient market economy” (62). The Copenhagen criteria have been upheld as the political criteria still required for accession to the European Union to this day.

Three major elements characterize the tactical concessions phase is characterized by three major elements: 1) a shift to domestic strengthening of human rights organizations; 2) shaming and material sanctioning by the international community; 3) government discourse focusing more and more on specific accusations (Risse, Ropp and Sikkink 1999, 25-8).

The strengthening of the domestic human rights community took place in the 1980s and 1990s, as leftist NGOs formed to first respond to the military crackdown, and then refocused their efforts on the abuses carried out during the TSK-PKK conflict in the

southeast against Kurdish populations (Çali 2007). These organizations were IHD (established in 1986), and TIHV (established in 1990 by IHD). A new group, *Mazlumder* also formed in order to advocate for a community whose needs had been largely unmet by the leftist organizations - conservative Muslim communities fighting oppression relating to religious expression. *Mazlumder* simultaneously aided in documentation and monitoring of human rights abuses of a wide variety, including those in the Kurdish southeast (Tezcür 2015; Interview # 27).

Additionally, in 1994, the Economic and Social Studies Conference Committee (established in 1961), created a research think tank (TESEV), in order to carry out intellectual study of multiple issues relating broadly to human rights. In 2004, they reorganized their work to focus simultaneously on *Democratization, Good Governance and Transparency*, and *Foreign Policy*.¹ The human rights community continued to grow with the establishment of Hafiza Merkezi in 2011. This organization brought lawyers, journalists and human rights activists together, with a focus on collection, documentation and preservation of information relating to human rights abuses. Their goal is to establish sources of collective memory, and to aid victims of human rights abuses.² Both TESEV and Hafiza Merkezi have contributed extensively to the systematic study of these topics, and connected organizations that are focused on human rights activism with local and international scholars working on Turkey.

The second element of the tactical concessions, shaming and material sanctions by the international community, has been intermittent since 1995. After the Customs Union

¹ <http://tesev.org.tr/en/how-has-tesev-come-to-today/> Accessed May 12, 2016.

² <http://hakikatadalethafiza.org/en/about-hafiza-merkezi/> Accessed May 12, 2016.

was established in 1995, Turkey came face to face with sanctions from the European community in 1997 when the Luxemburg European Council denied the country's application for membership status, while simultaneously accepting 10 central and Eastern European countries, as well as Cyprus (Cizre 2001, 62). However, this sanctioning seems to have "reinforced the process of instrumental adaptation to the pressures on human rights issues, rather than facilitating the argumentation, persuasion and dialogue between the government and domestic and international human rights agencies" (Cizre 2001, 69). Strategic adaptation by the government continued into the 2000s as well.

The final characteristic of tactical concessions is discursive changes among government officials. After 1999 Türkmen noted a change in government discourse as officials began "admitting [Turkey's] shortcomings in the area of human rights and adopting the European Union line on most issues" (254). Additionally, whereas the government had until 2000 responded to cases brought in the European Court of Human Rights by arguing the cases (and losing the vast majority of them, demonstrating *denial*), between 2000 and 2004 there was a sharp increase in the percentage of cases that were resolved through friendly settlement, paying "several million dollars in settlements to victims" and therefore recognizing state responsibility before the European Court (Türkmen 2007, 269). These discursive and tactical changes in the way the Turkish government responds to the extensive condemnations of the European Court indicate that the government is no longer seriously attempting to stave off the normative validity of the European human rights regime in practice. This is a strong indication of the tactical concessions phase in which the government enters more fully into the argumentative

discourse exchanges over specific violations, and therefore reinforces the validity of these norms.

For a period of time in the early 2000s, it seemed that tactical concessions had worked and would be enough to move Turkey forward in the EU accession process. In 2004, the European Commission determined that Turkey had sufficiently met the Copenhagen criteria, and therefore opened accession negotiations in October 2005 (Türkmen 2007, 260). This was in stark contrast to the report issues by the Commission in 1998, which called for “A civil, non-military solution...to be found to the situation in south-eastern Turkey, particularly since many of the violations of civil and political rights observed in the country are connected in one way or another with this issue” (cited by Yildiz & Muller 2008, 173). This echoed the sentiment expressed by the European Parliament two years later when they called for “a comprehensive solution for the aspirations and problems of the Kurdish population and to Constitutional provision on cultural rights” (ibid).

The 2004 decision, and its accompanying report only weakly criticized the Turkish regime’s record on human rights abuses, and particularly glossed over the ongoing abuses of Kurdish populations and the continuing consequences of the military intervention in the 1990s, as unnecessary to consider as obstacles to the opening of accession negotiations (Yildiz & Muller 2008, 191).³ In fact, it seems that economic considerations were a greater priority than demonstrable advancement of human rights. In 2006, the Council of Ministers decided not to move forward with accession negotiations

³ This weak criticism could also be related to the fact that the conflict with the PKK had calmed at this point.

as a “direct consequence of Turkey’s failure to implement the Additional Protocol to the Ankara Agreement [free trade with Cyprus as a member of the EU]” (Ibid 189).

Starting in 2005, the AKP led regime took tentative steps to resolve the Kurdish problem. The first attempts are known as the Kurdish openings in 2005 and 2009, and then what the AKP government called the “peace process” between 2013 and mid 2015. Throughout this period the regime also enacted a series of laws meant to curtail the seemingly endless train of cases under review by the European Court of Human Rights regarding human rights violations, particularly those regarding disappearances and extrajudicial killings.

One of the major methods enacted was a series of compensation laws, not unlike those passed in Algeria. In fact, the laws are uncannily similar to those across the Mediterranean: families were awarded monetary compensation based upon their willingness to sign declarations (often attributing the death of their relative to insurgent attacks), that in effect meant the declaring of the official death of their relative, despite the fact that they do not necessarily consider them dead, as well as renouncing their right to pursue legal action in domestic or international courts (Interview 20; Interview 26; ICG 2011; Hafiza Merkezi 2013; Çali 2010; TESEV 2012). This policy demonstrates clearly how Algeria and Turkey are quite similar in terms of regime responses to rights abuses and the pressures of individual criminal accountability.

Prescriptive Status?

According to the spiral model, a country moves to the fourth phase of *prescriptive status* when the government takes action on four fronts:

“ 1) They ratify the respective international human rights conventions including the optional protocols; 2) the norms are institutionalized in the constitution and/or domestic laws; 3) there is some institutionalized mechanism for citizens to complain about human rights violations; 4) the discursive practices of the government acknowledge the validity of the human rights norms irrespective of the (domestic or international) audience, no longer denounce criticism as ‘interference in internal affairs,’ and engage in a dialogue with their critics” (29).

Ratification of international human rights treaties in general had started in the early 2000s as Turkish government officials sought to move forward decisively regarding the European Union accession process, signing (in 2000) and ratifying (in 2003) the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESC) and the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) (Türkmen 2007, 253). The two optional protocols for the ICCPR were signed in 2004 and ratified in 2006, although Turkey has not signed the optional protocol for the ICESCR. Turkey had already signed and ratified the Convention against Torture, under the Özal administration, in 1988, but did not sign the optional protocol until 2006, and only ratified in 2011.

In contrast, it must be noted that in terms of international treaties recognizing individual criminal accountability, there has been little movement on the part of Turkish authorities. Turkey has neither signed, nor ratified the International Convention for the Protection of All Persons from Enforced Disappearances, nor the Rome Statute recognizing jurisdiction of the International Criminal Court.⁴ Enforced disappearances and extrajudicial killings can be considered under the category of the Convention Against Torture (and enforced disappearances have been recognized in international law as a form

⁴ <http://indicators.ohchr.org> Accessed May 12, 2016.

of torture for family members), which does recognize individual criminal accountability (Article 7), but also recommends compensation for violations (Article 14). It is evident though that despite the fact that Turkey's longest legal adherence to any international human rights convention is to the Convention Against Torture (CAT), this has not concretely impacted the level of torture ongoing in Turkey today (Arat 2007; Human Rights Watch, 2016). In this respect, although one could argue that other human rights norms were moving toward that direction in the first decade of the new millennium, has not moved out of the tactical concessions phase in terms of the norm of individual criminal accountability.

In terms of the second criteria, institutionalization of norms into the constitution or domestic law, the most recent trends since 2014 indicate that the regime is moving toward authoritarianism. One would be remiss to leave out the fact that up until 2013 the regime was enacting extensive changes to the Turkish constitution and domestic law, through the leading mechanisms of judicial reform packages based on European Union accession criteria (Karakaya and Özhables 2013, 6). Specifically, the regime has passed four judicial reform packages, and amended the constitution through referendum in 2010. These judicial reform packages have been particularly aimed at moving forward Turkish accession to the European Union, and definitively resolving the "frequent convictions for violating certain articles of the European Convention on Human Rights" (Karakaya & Özhables 2013, 5).

Substantively, the constitutional amendment changed the High Constitutional Court and the High Council of Judges and Prosecutors (HSYK) to be more independent

from the military (and from the executive, to a certain extent), but these changes were reversed after December 2013 (to be discussed in greater detail below) (Özbudun 2015a, 2015 b).⁵ The constitutional amendment of 2010 also created the ability for individuals to petition the Constitutional Court. Despite threats to repeal this right, citizens are still able to appeal to the highest court at the time of writing.

Upon examination of the judicial reform packages and their actual impact on judicial practices, it is evident that at times the Turkish government's logic was still largely strategic, if not disingenuous. For example, in 2011, the Commissioner for Human Rights of the Council of Europe noted that although there had been amendments made to the provisions within the Anti-Terrorism Law (in 2004 and 2006 respectively)⁶ which was the root of most of the cases brought before the ECtHR regarding freedom of expression, the amendments actually did not noticeably change the text or meaning of the legislation (Karakaya and Özhabes 2013, 11). This is particularly worrisome because the lack of real reform suggests a larger trend in domestic penal legislation and habits of judges and prosecutors (ibid. 17). When summarizing one aspect of these judicial changes a report by TESEV concluded in 2013,

“From its initial establishment on, the judiciary in Turkey has functioned as a means of disciplining society of which it has always been suspicious. The aim of the judiciary, therefore, was not to secure the rights of individuals and the community vis-à-vis the state, but to ensure that individuals would not become a threat to the state. As a result, although the nature of the perceived threat has

⁵ There was disagreement about whether this signaled real liberalization or simply political maneuvering by the executive (see Bakiner 2016).

⁶ This law has maintained its controversial status in the ongoing negotiations regarding accession to the EU and Turkey is currently continuing its refusal to amend it. <http://www.theguardian.com/world/2016/may/06/erdogan-turkey-not-alter-anti-terror-laws-visa-free-traveleu> Accessed May 22, 2016.

changed over time, the essence of the judiciary has stayed the same” (7).

The quotes aptly describe the fact that although extensive changes have been made in the early 2000s, these changes have not affected the core of the Turkish judicial system.

Given the series of events that have unfolded over the past six years (including the full resumption of the armed conflict with the PKK in the summer of 2015), it is difficult to argue that Turkey moved beyond the third stage of the spiral model. On one hand, a wide range of activities were carried out in the early 2000s by the Turkish government, impacting not only national discourse but constitutional and domestic legislation, as well as domestic actors. Then prime minister Recep Tayyip Erdogan was known to claim into the mid-2000s that the Copenhagen criteria are being turned into the “Ankara Criteria” – a bold statement indicating, in retrospect, perhaps that the Turkish executive wants to convince the European Union and international community of its commitment to human rights, despite the shallow effects of the actual changes made (Smith 2007, 261). Changes were occurring, but were in the context of ongoing and continuing denial of the validity of certain human rights norms by high-level actors.

In fact, because of the breakdown of Turkey’s rule of law system and the lack of advancements made on human rights issues (particularly toward a peaceful resolution of the conflict with the PKK) it is difficult to see the statements made by AKP officials before December 2013 as true dialogue. They appear to be adaptation to structural requirements for accession to the EU, without any genuine interest on the part of the government in the accompanying normative values. In terms of the ICA norm, laws on

the books make it technically legal to prosecute military or government officials.⁷ In reality, the laws dramatically complicated this process – to the extent that until 2008 there was a de facto rule of impunity for military officials. Until 2008 the situation of families of the disappeared in Turkey was strikingly similar to those in Algeria. Legal evidence was provided through officially logged grievances to domestic prosecutors (implicating security and military officials), but prosecutors and judges consistently refused to open cases, citing lack of evidence or a passed statute of limitations (e.g., Interview # 22, Interview #4, Interview #25). This is perhaps the best indication that the ICA norm was not any more advanced in Turkey than in Algeria, until 2008.

In summary, this broad overview of the impact of international human rights norms on Turkey's domestic political context indicates that Turkey is currently stalled in the third stage of the spiral model, tactical concessions. The country exhibited elements of the first two stages (repression and denial) starting in the 1980s and began to engage extensively with human rights norms in the public arena after 1995 through tactical concessions within the context of the process for accession to the European Union. These concessions have had an impact on Turkey's international commitments and a limited and uncertain impact on the domestic recognition and adherence to human rights norms. Particularly regarding the norm of individual criminal accountability for human rights abuses, the Turkish government has displayed few signs its impact. It is within this context, that first instance Turkish courts began to open trials prosecuting military

⁷ In June 2016 the parliament passed legislation requiring administrative approval for prosecution of military members for activities while carrying out anti-terror campaigns. "Draft Proposes Legal Shield for Turkish Soldiers in Anti-Terror Fight" *Hürriyet Daily News*, June 7, 2016. <http://www.hurriyetdailynews.com/draft-proposes-legal-shield-for-turkish-soldiers-in-anti-terror-fight.aspx?pageID=238&nID=100203&NewsCatID=338>.

officials for human rights abuses carried out against Kurdish citizens in the 1990s.

The spiral model cannot clearly explain the emergence of trials because it lacks the integration of low level actors into the model. The findings in Turkey run counter to the expectations of the spiral model, which predicts change to the domestic context to occur through top down processes, once the fourth stage of prescriptive status has been breached.

Impact of Elite Conflict On The Judiciary

The following section of this chapter first describes the series of trials that have occurred in domestic Turkish courts since 2008. It then argues that given the nature of events that have unfolded in Turkey since approximately 2002, one must look at domestic power switches (solidified in 2007/8) to understand how human rights trials emerged during that time period.

Recent scholarship on Turkish politics has pointed to unlikely political phenomena facilitating the advancement of protection for human rights. In a study of high court behavior, Belge (2006) argues that temporary conflict within the TSK- Republican alliance in the 1970s and again in the early 1990s explains selective support of rights and liberties by the Turkish Constitutional Court during those periods. In the later period, this short-term elite rift resulted in the Republican-left briefly aligning with Kurdish politicians. This encouraged the court (which Belge notes has traditionally been beholden to military elites) to strike down certain parts of the anti-terror law and other illiberal military policies affecting Kurdish populations (Belge 2006, 68). Tezcür (2009) takes up this subject in greater detail in his analysis of lower court activity, showing that unexpected events in 1996 and 2005 led to initial legal and parliamentary activity

investigating illicit military activities. Through comparison of the 2005 Semdinli incident (in which members of the TSK and an ex-PKK militant were caught bombing a bookstore owned by a civilian with PKK sympathies), and other recent cases within the lower courts targeting the TSK, Tezcür found that lower courts were more capable of prosecuting members of the military when they had significant backing from the civilian government and public support from key civil society actors (331). This research indicates that when power is dispersed between multiple actors within the elite political establishment (in this case between the TSK and the AKP), legal action becomes more possible for judges able to count on the protection of certain power centers against others. However, at the time of the Semdinli case (2005), the military was still strong enough to counter its opponents. Through influence in the High Court of Prosecutors and Judges (HSYK) the military was able to expel the public prosecutor who had brought the case, claiming publically that he did not have the authority to investigate military personnel (Atilgan and Isik 2012).

In 2008 the lower courts again began to facilitate prosecution of TSK members, accepting and initiating two types of trials: those known as the coup trials (for crimes against the state) (Budak 2015; Bakiner 2016); and those for individual criminal responsibility for human rights crimes, initiated by civil society litigation based on victim complaints (human rights trials). In July 2008 the first indictments were issued after government investigations were launched because of an anonymous tip indicating that there was a stockpile of weapons in a shanty town located in an urban neighborhood of Istanbul (Jenkins 2009, 37). Prosecutors initiated the *Ergenekon* trial (the first of three coup trials) as a result of these indictments. From 2008 to 2012, 275 defendants,

including many military officials, were tried (with over fifty held in detention during trial) for membership and activity in an armed terrorist organization, *Ergenekon*, and an attempt to overthrow the government. The *Ergenekon* trials came to a close and a verdict was announced in August 2013, condemning General Veli Küçük, Capt. Muzaffer Tekin and Alparslan Arslan (the shooter in the 2006 Council of State attack) to consecutive life sentences. Other military officials were sentenced to aggravated life imprisonment. However, as reported in the *Hurriyet Daily News* in March 2014, the parliament passed a law abolishing the specially authorized courts in which the *Ergenekon* cases were being appealed, which led to the release from prison of multiple high profile individuals charged in the trial (“Ergenekon Suspects Released...” 3/10/2014). In April of 2016, the Supreme Court overturned the *Ergenekon* decision (*Hurriyet Daily News*, April 21 2016).⁸

Meanwhile, in 2010, prosecutors issued indictments in the September 1980 Coup trial for General Kenan Evran and General Tahsin Şahinkaya, for their role in the 1980 military coup. They were each convicted and sentenced to life imprisonment in 2012, and demoted to the rank of private. The Constitutional Court unanimously rejected an appeal of the verdict (Armutçu 2014) and ex-general Evran died in May 2015.

Additionally, prosecutors opened a third case, known as the *Balyoz* (Sledgehammer) case in 2010, regarding a military plan ostensibly started in 2003 to overthrow the AKP led government. In the *Balyoz* trial 236 serving or retired military members were indicted and sentenced. The trial was consistently criticized for

⁸ <http://www.hurriyetdailynews.com/turkeys-ergenekon-plot-case-overturned-by-top-court-of-appeals.aspx?PageID=238&NID=98113&NewsCatID=509> Accessed May 15, 2016.

questionable procedural elements until the Constitutional Court overturned the decision calling for a retrial in June 2014 (citing violations of the rights of the accused). On March 31, 2015, the court acquitted all suspects announcing its determination that a substantial amount of the evidence was forged and inadmissible (Hurriyet Daily news, March 31, 2015).

Although the three coup trials occurred during the same period, they have each left a distinct legacy and impacted trust in the judicial process in varying ways. Public opinion has largely turned against the 1980 coup in recent years, and the trial against the coup leaders was widely considered to be legitimate. The *Balyoz* trial included tampering with evidence and forging of official documents by members of the executive AKP and its allies associated with the Gülen movement, therefore drawing greater criticism than the 1980 coup trial. The *Ergenekon* trials have also received increasingly stronger criticism for misuses of power by the judiciary and police forces in charge of investigations and proceedings (Jenkins 2015) and as noted above, were recently overturned. *Ergenekon* was, however, considered legitimate within the human rights community to the extent that they included accusations of multiple high profile unsolved murders, attributed to security forces – the first time these accusations has been heard in a public state venue (Bakiner 2016).⁹ The three coup trials were similar to each other in that they were initiated by government investigations (not victim complaints of wrongdoing), garnered massive public attention (domestically and internationally), and targeted high level officials in the military, and former power holders for crimes against the state. In

⁹ Interview # 6, 1/1/15, Istanbul

these three ways they were qualitatively different than the human rights trials to which we will now turn.

Human Rights Trials

Ergenekon dramatically impacted the work of human rights activists because of the extensive testimony and evidence submitted and heard substantiating individual responsibility for human rights crimes (Avsar, Özdil and Kirmizidag 2013; Bakiner 2016). Furthermore, two months after the *Ergenekon* trial was opened, the first human rights trial, examining crimes carried out by the covert JITEM unit, began in September 2008.

The *Ergenekon* coup trial was the first time that the wider legal community was exposed to evidence of human rights crimes by security forces from the conflict with the PKK in the 1990s. NGOs worked with families to submit evidence regarding these crimes, although ultimately, the court decided to strictly focus on crimes against the state, and returned case files to lawyers representing families of victims.¹⁰ Activists and families I spoke with saw the *Ergenekon* trial as a major missed opportunity because, as one individual explained, “there were clear connections between the military and civilian government and human rights crimes committed, and evidence provided.”¹¹

However, beyond this missed opportunity, there was also a widespread sentiment among those I interviewed that the *Ergenekon* trial facilitated the series of subsequent trials that were to begin in 2008, investigating individual criminal responsibility for human rights crimes (see also Avsar, Özdil and Kirmizidag 2013). Media reports support

¹⁰ Interview #33, 12/27/1, Istanbul

¹¹ Interview A#3, 1/18/15, Istanbul

this idea, indicating that at the end of the *Ergenekon* trial, over 9,500 files concerning enforced disappearances and extrajudicial killings were distributed to nine different prosecutors (*Zaman*, September 20, 2013).

Echoing an interpretation expressed by many of those interviewed, one jurist from a human rights association explained, “the *Ergenekon* and *Balyoz* trials triggered the following human rights trials...[by showing] that military members could also be tried.”¹² In contrast to the coup trials (which were initiated by police raids directed by the government and focused exclusively on crimes against the state), the human rights trials were initiated by civil society litigation based on victim complaints. They have also been low profile in comparison to the coup cases. They have been progressively opened since 2008 and, in contrast to the coup trials, only one of them has been definitively closed (after an appeal at the Constitutional Court it resulted in acquittal), and half of them are still open in first instance courts at the time of writing.

These trials are an exceptional example of domestic litigation for human rights abuses in the Middle East North Africa region (MENA), and to my knowledge have not to this point been examined in scholarly work.¹³ To explain this phenomena, I draw on literature citing power distribution theory – the claim that policy decisions regarding justice are determined mainly by domestic political power switches from previous authoritarian elites to a new government, seeking policies to address justice (Huyse 1995; Nino 1996; Pion-Berlin 1994; Skaar 1999; Zalaquett 1992). I move away from the assumptions (inherited from the transitions literature) of a clear transition point, unilateral

¹² Private email communication, April 6, 2015.

¹³ Although Budak 2015 and Bakiner 2016 analyze the coup trials mentioned here.

movement toward democracy, or even a general evolutionary trajectory of democracy over the long term. Furthermore, although the change of power in Turkey brought to the fore new actors (the AKP and their alliance of Islamist elites, particularly with the Gülen movement) who were previously victimized by the TSK, their desire to prosecute the TSK in the coup trials seems to have been motivated by self-interest rather than commitment to human rights norms, as is evidenced by their mounting human rights violations in multiple arenas since gaining power.

Furthermore, I argue that the trials for human rights abuses were not driven by these elites, as was the case in the coup trials, outlined above. Rather, the changes in elite power (clearly demonstrated through the trials of military officials for crimes against the state) called into question the previous status quo assumption of immunity for TSK officials among prosecutors and judges. The political opportunity structure facing lower level judicial actors shifted, creating a period in which trials, this time driven by ongoing legal mobilization of civil society actors, started to be accepted for indictment and proceedings by judges and prosecutors who had systematically refused to open the trials until 2008. Simply put, I suggest that changes in distribution of power between elite actors facilitated opportunities for ongoing legal mobilization by civil society to take root. This is different than the spiral model as it looks at specific domestic actors (prosecutors and judges) associated with the ICA norm that are not included in that model. Additionally, my argument revolves around the fact that although there has been change among these lower level judicial actors leading to trials, it has not been accompanied by discursive or behavioral change among state leaders. My research indicates that the conflict between the military, old guard establishment and the AKP

identified by Tezcür (2009) (see also Turkmen 2008), allowed for the introduction of these indictments and preliminary court proceedings by low level judicial actors.

Domestic Trials For Individual Criminal Accountability For Human Rights Crimes

Between 2008 and 2015, 15 cases were opened and ten cases are currently pending at various levels in the hierarchy of domestic Turkish courts. These cases are different than the hundreds of files that have been dismissed by prosecutors up until 2008 (and since) in a number of ways, in that they have surpassed the usual hurdles set up by the judicial system: the prosecutor has accepted the file and opened an indictment, carried out investigation on the alleged crimes, filed the indictment with a court, and court hearings have begun. Many of the cases have also had multiple court hearings.¹⁴ Three of the ten cases are currently before the Constitutional Court.¹⁵ Despite inconsistency in hearings and the substantial problems faced by victims' families during proceedings,¹⁶ these trials have achieved progress in a number of key ways. The trials have resulted in 1) the introduction of the first legally recognized witness testimony in domestic courts against former military officials detailing human rights violations (and included in indictments); 2) extensive investigation of crimes (usually by lawyers for the victims) revealing mechanisms of impunity contributing to human rights violations as well as the

¹⁴ For further details regarding these trials see the ongoing database put together by a group of human rights organizations in Turkey and organized by the Turkish Economic and Social Studies Foundation: <http://failibelli.org/dava/altinova-mus-vartinis-davasi/> Accessed February 9, 2016.

¹⁵ The statute of limitations for criminal prosecution in Turkey is currently 20 years after the crime has been committed. However, human rights organizations are currently working to overturn this law for cases specifically dealing with human rights abuses, through cases currently before the Constitutional Court (Alpkaya et al. 2013; Amicus Curiae Brief 201).

¹⁶ For example, trial proceedings are always carried out in Turkish, and responsibility for the coordination and financing of interpretation into Kurdish (the operative language for almost all victims' families) falls upon the families.

identity of alleged perpetrators; 3) the ordering by multiple courts of exhumations and identification of human remains (an often repeated goal of families); and 4) the detention of some former and current military officials in relation to human rights crimes (Truth Justice and Memory Center, 2014).

As a result of these achievements, the trials have substantially challenged the official narrative espoused by the government. The government frames violence from this period exclusively within the context of the ongoing TSK-PKK conflict, and civilian deaths as collateral damage, or simply as increases in the “terrorist” body count. These trials have instead provided a venue in which the conflict with the PKK is framed as including human rights violations by the TSK, and evidence has been provided of civilian suffering through systematic enforced disappearances and extrajudicial killings. The trials represent a legal context not previously afforded to victims of these crimes in domestic courts.

This makes these cases categorically different than the cases for which the ECtHR has condemned Turkey, because the cases discussed here have resulted in domestic hearings through which contestation of the regime discourse has now been officially introduced into the domestic legal arena. The introduction of counter-narratives has been recognized as an important element for transitional justice processes (Lessa 2013), in truth recovery for reconciliation after massive human rights violations (Kovras 2014), and also in conflicted democracies (like Turkey) dealing with ongoing human rights abuses (Bilsky 2004). For these reasons these court proceedings merit attention.

The Mechanism – Redistribution of Elite Power

Through my interviews it became apparent that many of the people I spoke with believed the coup trials came about because, in 2007-2008, an alliance that had been consolidating for decades between Islamist factions (the AK party and the Gülen community) was at its height. The AKP-Gülen alliance combined the power of the executive (held by the AKP) and the extensive networks and resources of the Gülen movement, which at the time had strong support within the judiciary and police forces (Ozbüdü 2015; Bakiner 2016, 146). As one Turkish legal scholar explained, the AKP and Gülen alliance “allowed for greater independence and movement by prosecutors.”¹⁷ A former military judge with whom I spoke agreed that the alliance facilitated the indictments and initial prosecution stages, since these events “were not achievable only through legal means...cases were opened...because of this unification, and power of the Gülen movement in the judiciary...”, added to the strength of the executive.¹⁸

The AKP and the Gülen movement worked hand in hand through the coup trials to reduce the alliance between the TSK and the judiciary which had for decades targeted and repressed Islamist political actors including current members of both groups. In the words of a legal academic familiar with the trials, “Without the...power conflict between AKP and Gülen versus the old guard tutelage it would not have been possible for human rights activity to break through.”¹⁹ When political power shifted to the AKP-Gülen

¹⁷ Interview # 3, 1/18/15, Istanbul

¹⁸ Interview # 38, 1/26/15, Istanbul

¹⁹ Interview # 6, 1/1/15, Istanbul

alliance these new actors pursued their own political vendettas, targeting the military through the coup trials. Interview data indicates that, in contrast to the coup trials, the human rights trials were not a case of direct political vengeance where elites in the executive targeted military actors through the judiciary.²⁰

Interviews with relatives also support the argument that the coup trials originated under different circumstances than the human rights prosecutions. Many individuals stated that they had filed complaints (to initiate trials) out of a desire for legal justice and appropriate jail sentences, not vengeance and the death penalty. In the words of the wife of a victim of enforced disappearance, “those responsible should be imprisoned. We are not like them, we don’t want them killed.”²¹ The daughter of a man forcibly disappeared from the region of Şırnak, a predominantly Kurdish town near the border with Iraqi Kurdistan, echoed this sentiment expressed by many relatives: “we don’t think like them. We don’t want a reprisal, or retaliation...we want prison and an apology.”²² These statements reveal the fact that victims’ families who filed domestic cases perceive a personal interest in upholding the rule of law and adhering to regulations protecting defendants’ rights, particularly as a method of differentiating themselves from their aggressors. Additional relatives of the disappeared repeated this theme, lending further

²⁰ It is worth noting that if future evidence came to light indicating that the human rights trials were opened because of direct executive instructions to prosecutors in the various jurisdictions that have held hearings, the trials would remain important. They would represent an important movement forward concerning truth revelation and hegemonic narrative contestation. This is because in the process of these prosecutions meaningful contestation has taken place and been recognized for the first time within the judicial arena. It was also included in documentation by the courts.

²¹ Interview # 25, 12/26/1, Istanbul

²² Interview # 37, 11/11/1, Istanbul

support to my interpretation of the difference between these human rights trials and the coup trials. The human rights trials referred to herein originated in rights claims and were not started through executive investigations (like the coup trials), but through investigations opened by individual prosecutors who decided to follow up on victim complaints (Jenkins 2009, 37). Finally, these statements also indicate the strength of the ICA norm among professionals, activists and families.

Interview data from legal professionals and human rights activists indicates that these human rights prosecutions seem to have come about through a lifting of pressure on members of the judiciary (prosecutors and judges) to ignore human rights abuses committed, or to protect military officials from litigation attempts.²³ This characterization of the emergence of the trials is further supported by the haphazard timing and location of the trials: proceedings were not opened all at once as if by a centralized decision, but rather progressively and with decreasing time between the initiation of later cases.²⁴ As can be seen in Table 5, one trial was initiated each year in 2008, 2009, 2011 and 2012. Five trials were initiated in 2013, and three trials in 2014, indicating a cascade of progressively more trials in later years, up until 2014. Additionally, the locations of trial initiation are geographically dispersed around the southeast (Diyarbakir, Sirnak, Hakkari, Mardin, Ankara and Mus). It was not until 2013 that a trial was opened for the second time in one of these locations indicating that different public prosecutors initiated the first four trials.

²³ Interview #3, 1/18/15, Istanbul

²⁴ No new trials have been initiated since October 2014.

Table 5. Human Rights Violation Trials in Turkey since 2008

Informal Case Name (Defendant or Victim)	Subject of Trial (Enforced Disappearance = ED, Extrajudicial Killing = EK)	Location of Trial	Start Date	Status as of 5/16
1. JITEM	ED, EK by individuals alleged to be a part of the Gendarmerie Intelligence Anti-Terrorism Unit (JITEM)	Diyarbakir, Ankara	9/24/08	Acquittal 11/5/15
2. Temizöz & Others (D)	ED of 20 persons from 1993-1995	Sirnak, Eskisehir	9/11/09	Acquittal 11/5/15
3. Nezir Tekçi (V)	The shooting and blowing up by mine	Hakkari, Eskisehir	5/4/11	Acquittal 9/11/15
4. Musa Çitil (D)	ED, EK of 13 civilians in 1992. The accused is active duty.	Mardin, Çorum	7/16/12	Acquittal by SCA 6/22/15
5. Lice Massacre	EK of 16 people, including former gendarmerie regional commander general Baytiyar Aydın	Diyarbakir, Eskisehir, Diyarbakir, Izmir	9/2/13	Pending
6. Kulp Disappearances	ED of 11 people during operation in Alaca village	Diyarbakir, Ankara	10/24/13	Pending
7. Mete Sayar (D)	ED of 6 villagers detained by soldiers in town of Görümlü	Sirnak, Ankara	11/5/13	Acquittal 7/2015
8. Abdulmecit Baskin (V)	EK of the Director of Population, case dropped and then reopened	Ankara	11/27/13	Combined with #13, Pending
9. Altinova	The murder of nine people of the same family, burned to death.	Mus, Kirikkale	12/5/13	Pending
10. Mehmet Emin Bingöl (V)	EK of three villagers	Mus, Van, Mus	1/20/14	Acquitted 12/22/14
11. Bıçak Timi (Knife Team)	EK of 12 individuals between 1993-1996	Mardin, Ankara	6/20/14	Pending
12. Dargeçit Disappearances	ED, EK of seven villagers (including three minors)	Mardin, Adiyaman	10/30/14	Pending
13. Ankara Case	Enforced Disappearances and Extrajudicial killings	Ankara	5/25/11	Pending
13. Hasan Gülünay; 14. Nezir Acar; 15. Ömer Ölker	Not accepted in lower court because of state of limitations → individual petition to the Constitutional Court	Constitutional Court	4/25/13 05/08/13 01/15	Pending

The following section examines the utility of the current explanations for the emergence of human rights trials. I examine which explanations clarify the mechanisms that could have facilitated domestic trials in Turkey since 2008, but have failed to develop domestic trials in Algeria in the same time period. I argue that the current theories within the literature used to explain the emergence of trials cannot fully explain why it is that until 2008 these *different* cases exhibited roughly the *same* domestic outcome regarding justice for human rights abuses, nor can these traditional explanations explain the change that occurred around 2008 that allowed a series of 15 human rights trials to emerge in Turkey, but not in Algeria.

Current Explanations of Human Rights Trials and the Turkish Case

International Level Explanations

As was discussed in the introductory chapter, there are roughly two types of explanations for the emergence of domestic human rights trials: international level explanations, and those that focus on domestic factors. There is no doubt that the role played by TANs has been important in Turkey in helping to establish international and domestic legal mobilization. In terms of relations to the international environment, Turkey has high levels of linkage compared to Algeria (including through local NGOs as discussed above). Democratizing pressure from Western governments and multilateral institutions can be slightly mitigated by the country's strong economy and geostrategic military position, particularly in the post-Arab uprising period, which may explain the AKP's lukewarm adherence to the accession process and dramatic turn towards the security narrative (Levitsky & Way 2006, 388). As has been outlined above, although there has been some material pressure placed on Turkey by the European Community and

then the European Union, and this seems to have impacted Turkey's willingness to engage in domestic legal changes, this pressure has been uneven and the government and international actors alike have prioritized security concerns (e.g. see Carnegie Endowment 2014 report). This was demonstrated most forcefully in recent negotiations with the European Union in which the EU agreed to move forward with accession negotiations in light of the a deal in which Turkey agreed to take huge numbers of refugees from Europe (Collett 2016; Botelho 2016).

These two literatures emphasizing the international factors influencing Turkey's domestic politics are pertinent to the Turkish case because of the important role played by direct linkage to the Council of Europe, and currently less direct linkages to the European Union (EU), through Turkish citizens' recourse to the European Court of Human Rights (ECtHR) (Alpkaya et al. 2013, 108). As a member of the Council of Europe since 1949, Turkish citizens have had the right to petition the ECtHR since the adoption of the European Convention on Human Rights (1953). The ECtHR has served as an extensive and effective international venue that has revealed the extent of human rights abuses in Turkey, and allowed particularly for the review of violations carried out in the southeastern region of the country. The international linkage with the court, in conjunction with the (albeit uneven) EU accession process explains the increasing pressure on the Turkish government to address these crimes in ways that contribute to judicial and legal reform (on which accession progress is largely based).

Yet, neither these linkages and accompanying pressure, nor the ongoing work by transnational advocacy networks can explain the timing of the human rights trials. During the two years immediately preceding the opening of cases, Turkey's accession to the

European Union was stalled due to the regime's unwillingness to enter trade relations with Cyprus. Although negotiations were again reopened in March 2007, in 2014 the European Union accession process was judged to be "more problematic...than in any point since negotiations started in October 2005" (Pierini & Ülgen 2014, 9). This rocky relationship cannot have resulted in a drop in material pressure on Turkey. Therefore it cannot explain the changes at the domestic level among prosecutors and judges who started opening domestic human rights cases in 2008.

A second possible explanation for the emergence of trials would be the international normative change that has impacted how individuals and governments think about justice for human rights abuses. As I have demonstrated above, the ICA norm has not strongly influenced the Turkish regime. They have avoided signing or ratifying most international agreements that support it.

Data from my interviews indicates that there is strong support for the ICA norm among the population affected by these crimes. Among all interviews, 74% indicated support for ICA (29/39). Among relatives 69% of those interviewed supported ICA (11/17), and among legal professionals and human rights activists the percentage was 82% support (18/22). These findings are similar to, albeit slightly higher than, those outlined for Algeria in the previous chapter. In interviews, relatives and activists habitually spoke of justice in terms of individual criminal responsibility. For example, when asked to explain what justice would entail, a relative and activist in her 30s explained, "All of those responsible would be tried...without finding those responsible there is no meaning [to justice]" (Interview 10). In another interview with a relative in her forties, the interview subject explained that she had wanted to open a domestic case but

did not out of fear of reprisals. She elaborated saying that justice would mean that “the murderers were found and punished. I don’t want compensation” (Interview 3). These statements echo those made by many relatives, activists and legal professionals. However, although my research in Turkey indicates that there is strong support for ICA among these groups, there is reason to believe that at least some support of the ICA norm has been present among these groups since the early 1990s - when domestic complaints were first lodged (unsuccessfully) by relatives in Turkish courts, and then at the European Court of Human Rights. These explanatory variables had been active for decades in Turkey before the emergence of domestic trials for human rights (Interview #28).²⁵ Additionally, although the spiral model indicates that grass roots support is important for advancement from *tactical concessions* to *prescriptive status*, support for the ICA norm within this population does not, in itself, explain how that support was mobilized to impact lower level judges and prosecutors in Turkey, but was unable to be mobilized in Algeria.²⁶

Domestic Level Explanations

Other literature points to domestic level variables to explain why the Turkish courts began to open cases in 2008. Judicial independence has played a facilitating role in the Turkish cases but cannot account for the timing of the full set of trials. Furthermore, changes in judicial dependence on the executive in the last five years are actually

²⁵ Interview # 28, 12/13/1, Istanbul

²⁶ One might argue that the lack of domestic cases in the Algerian judiciary is simply explained by the Amnesty law. However, this does not explain why no cases were opened between the time that families began filing them in the 1990s to 2005, when the amnesty law was proposed.

themselves best understood in light of a framework that incorporates shifts in distribution of power over this time period.

Similarly, another mechanisms identified in previous literature (Michel & Sikkink 2013) is that of private prosecution. Private prosecution, as outlined in chapter three, is the ability of individuals to petition a court on their own (when the government has decided not to pursue a criminal complaint). Private prosecution does exist in Turkey, in the form of individual petition rights before the Constitutional Court. This can explain the presence of three of the human rights cases discussed here which are currently before the higher instance court in relation to whether the statute of limitations can apply to the crimes that the cases address.²⁷ However, individual petition does not apply to other Turkish courts and therefore cannot explain the full wave of trials presented here nor how or why cases opened up in lower courts. Private prosecution also exists in Algeria for all levels of the courts, and therefore should in theory facilitate cases being opened regarding victim complaints. This has not occurred. Distinguishing between whether the trials in Turkey were facilitated by judicial independence or my own proposal (redistribution of power to new elite actors creating a new and uncertain political context), is more complex. Political events since 2008 have included both factors. The following section examines these events in greater detail in order to parse out the causal mechanism behind trials.

Redistribution of Power vs. Judicial Independence

In 2010 the executive led AKP proposed a landmark constitutional amendment that it then issued as a popular referendum. There referendum passed by 58% of the vote

²⁷ These cases are ongoing at the time of writing.

(Bakiner 2016, 150). The amendment enacted a number of changes to the Turkish government, three of which are related to our topic, and require examination of whether the introduction of trials for human rights crimes was actually a result of greater independence of the judiciary from the executive (as Skaar suggests, 2007; 2011), and not a result of the redistribution of elite power. First, the amendment annulled legislation that had previously forbidden prosecution of the leaders of the 1980 military coup (leading the way for the opening of the 1980 coup trial in 2012). Second, the 2010 Constitutional Amendment also created the mechanism by which individuals could, for the first time, petition the highest court in Turkey, the Constitutional Court (*Anayasa Mahkemesi*) (see above). To the extent that the proposal of the Constitutional Amendment of 2010 occurred because of the strength of the Islamist alliance in the executive and state bureaucracy vis-à-vis the TSK, the right to individual petition before the high court can also be understood as a result of the changing power dynamics of the regime. Finally, the amendment made changes to the High Council of Judges and Prosecutors (*Hâkimler ve Savcılar Yüksek Kurulu*, HSYK), temporarily increasing its independence from the executive. Although the executive still participated after 2010 in the activities of the Council, it briefly played a more symbolic role (Özbudun 2015, 45).²⁸ To identify the most convincing explanation for the appearance of human rights trials in this period, a closer examination of the recent series of events is necessary.

Up until 2002 the military had been strong in the executive and judiciary because of its longtime alliance with the Republican old-guard parties. Although there were a few exceptions to this alliance (Belge 2006), for the most part it has been strong since the

²⁸ This independence was subsequently reversed.

1980 coup. Civilianization of the government began to occur in 2002 with the electoral success of the AKP through parliamentary elections and through the passage of multiple judicial reform packages in line with the EU accession process since that time. However, the civilianization process was still rather weak before the redistribution of power solidified in 2007-2008. This is clearly demonstrated by the Semdinli case of the bookstore bombing in 2005, in which the judiciary continued to side with the military, maintaining impunity for members of the armed forces (Tezcür 2009; Sağlam 2013).

The power shift that began in 2002 with the legislative elections that brought the AKP to power, was strengthened in 2007-2008 by a series of events: the election of Abdullah Gul (a member of the AKP) as president, along with a second successful parliamentary election for the AKP (2007), the investigations leading to the *Ergenekon* trial which implicated the military (2007), and the unsuccessful attempt by the judiciary to close the party through the courts between March and July 2008. The failed closure case was a resounding victory for the AKP party, although, as was reported in the local press, the party lost fifty percent of its state funding) (Güncelleme 2008). After these events the executive and judiciary were able to move forward confidently with the *Ergenekon* trial, actively opposing the military. The 2010 constitutional amendment strengthened their hand by opening the door to legal pursuit of the 1980 coup generals. To this point we see the executive and judiciary working hand in hand against the military, explained by the shift in power favoring the new Islamist alliance.

Multiple interview subjects from a variety of backgrounds within the legal field suggested that more recent conflict between the AKP and Gülen likely contributed to the

successful appeal (and eventual dismissal of charges) of the *Balyoz* trial.²⁹ As, Kadri Gursel reports in *Al-Monitor* on April 6, 2015, in December 2013 conflict between the AKP and the Gülen movement erupted into a public division Gülen sympathizers openly accused family members of high-level AKP officials of extensive corruption. This likely contributed to the recent acquittal in the *Balyoz* trial.³⁰

Although seven of the human rights trials were opened during the period of greater judicial independence from the executive (September 2010 - February 2014), the first trial that dealt prominently with human rights abuses was initiated in 2008 (the JITEM case). This case was the culmination of long-standing government initiated investigations resulting from the Susurluk (1996)³¹ and Semdinli (2005) incidents, which had uncovered information regarding human rights abuses attributed to JITEM. The case itself examined indictments for crimes against the state *and* the crime of murder of multiple persons, and can be understood as a sort of bridge between the coup trials (dealing exclusively with crimes against the state) and human rights trials (dealing exclusively with crimes against individuals). Additionally, victim initiated complaints were subsequently joined to this case in lower courts.

The second indictment and trial was opened in 2009 - before the increase in judicial independence from the executive. Additionally, since February 2014 the

²⁹ My interviews indicate that the AKP-Gülen conflict originated much earlier than 2013 (perhaps around 2010 with the Mavi Marmara flotilla incident) but remained discrete until that time (Interview #1).

³⁰ This is also likely the case with the 2016 acquittal of the Ergenekon case (Daily Sabah 2016).

³¹ The Susurluk incident occurred unexpectedly when a car crashed in 1996 killing two out of three of its occupants: the deputy chief of police of Istanbul, a Kurdish member of the Parliament commanding a paramilitary force and a leader of a right wing nationalist organization and criminal wanted by INTERPOL. The incident revealed high-level dealings between the military, violent groups and former PKK members.

executive has again curtailed the independence of the judiciary to a greater extent than even before the constitutional amendment of 2010. Surprisingly, in this most recent period of high risk for prosecutors and judges, two final trials were nonetheless opened (in June and October 2014).

In sum, judicial independence cannot explain the four trials opened before or after the roughly three years of increased judicial autonomy from the executive, nor the ongoing proceedings in seven out of the fifteen trials (at the time of writing). Judicial independence from the executive seems to have encouraged a phenomenon which started before 2010, and which continued after sanctions for this type of judicial activity were again increased in February 2014. Although judicial independence is part of the story, it does not explain the set of cases as a whole.

Redistribution of Elite Power: Key to Changing Judicial Independence

Redistribution of elite power should be considered as a key explanatory factor because it also clarifies the overall fluctuations in judicial independence from the executive between 2010 and 2014. In the lead up to the 2010 constitutional amendment, the Islamist alliance in the executive and judiciary was strong. The AKP could count on its allies in the judiciary as they were working together to prosecute the former coup leaders. Accordingly, in order to move forward with the EU accession negotiations, the AKP government proposed the constitutional amendment that met certain criteria previously requested through multiple European institutions.³² However, when the split

³² Venice Commission, *Draft Report on the Independence of the Judicial System: Part I: The Independence of Judges* (CDL(2010)006), 5 March 2010, para. 32, <http://www.venice.coe.int/webforms/documents/?pdf=CDL%282010%29006-e>; Consultative Council of European Judges, *Opinion No. 10* (2007), 23 November 2007, <https://wcd.coe.int/ViewDoc.jsp?id=122031>.

between the AKP and Gülen resulted in an open power struggle in December of 2013, the AKP party quickly moved to regain executive control over the judiciary and police, by passing laws that allowed it access to the investigation of corruption in which it was implicated.³³

By February 2014 the executive had reversed the changes enacted through the constitutional amendment (creating temporarily greater judicial independence) through law 6524. Before the Constitutional Court could render a decision on the constitutionality of these most recent actions, the executive also fired the Secretary General, Assistant Secretaries General, the Chairman of the Board of Inspectors and the Vice-Chairmen, Council inspectors, reporting judges, and all administrative personnel of the Supreme Board of Judges and Prosecutors (*Hâkimler ve Savcılar Yüksek Kurulu*, HSYK)(Özbudun 2015, 47). This constituted a near complete purging of the institution. Although the constitutional court subsequently ruled that law 6524 was unconstitutional, the removal of the HSYK personnel was irreversible since the Constitutional Court's decisions are not retroactive (leaving in place those newly appointed by the Minister of Justice) (Mustafa 2012).

This reversal of judicial independence occurred alongside large-scale purging of police officers and reassignment of members of the judiciary suspected to be supportive

³³ "Turkey's Council of State Annuls Controversial Regulation Lifting Investigation Secrecy", in *Hurriyet Daily News*, 27 December 2013. <http://www.hurriyetdailynews.com/turkeys-council-of-state-annulscntroversial-regulation-lifting-investigation-secrecy.aspx?pageID=238&nID=60215&NewsCatID=31>

of the Gülen movement, and involved in the corruption investigations.³⁴ As noted in the most recent report from Human Rights Watch on the situation in Turkey,

“[t]he AKP government in 2015 continued efforts to purge the police and judiciary of alleged supporters of the Gülen movement. During 2015, prosecutors, judges, and police officers with perceived links to the Gülen movement were jailed and charged with plotting against the government and membership of a terrorist organization. The main evidence being cited against judges and prosecutors at the time of writing was decisions taken in the course of their professional duties rather than any evidence of criminal activity” (Human Rights Watch 2016, 582).

In sum, the fluctuations in judicial independence of the judiciary over the last five years are directly related to the power struggle occurring between factions of the government. Although the brief increase in judicial independence could be called a sign of democratization, when one takes into account the larger set of events that explains institutional changes over this period it is obvious that these are not democratizing processes. If anything, the last five years has shown how the Turkish government is still strongly swayed by a powerful and controlling executive using legal processes in strategic ways to further its non-democratic agenda.

It is in the midst of this uncertain and changing political environment that the political opportunity structure available to prosecutors and judges changed because of the example of the coup trials. The status quo of military impunity for human rights crimes (and related retribution against judicial actors participating in the cases targeting the military) that had been reaffirmed in the 2005 Semdinli case, was rendered uncertain as a

³⁴ “Government Replaces More than 2,500 judges and prosecutors in latest mass purge” in *Hurriyet Daily News* 12 June 201, Accessed September 22, 2015 <http://www.hurriyetdailynews.com/govt-replaces-morethan-2500-judges-and-prosecutors-in-latest-mass-purge.aspx?pageID=238&nID=67702&NewsCatID=338>;

new set of actors gained power that substantially displaced the former strength of the military.³⁵

Finally, it should be noted that on its own the redistribution of power is not enough to explain the emergence of domestic prosecutions starting in 2008 because it does not consider what brought litigation to the domestic courts in the first place. Without the tireless efforts of activists and the legal community connecting victims' families to legal resources these trials would never have been initiated. Legal mobilization has played an essential role in the opening of human rights trials between 2008 and 2014. The mobilization of the law on behalf of the Kurdish victims of the conflict took place when families filed complaints in the domestic court system starting in 1994. These cases were systematically dismissed in domestic courts for ostensible lack of evidence for indictment, or because of a passed statute of limitations, until as recently as 2008 (Amicus Curiae Brief 2014).³⁶ The similarities to cases filed in domestic Algerian courts until 2005 are uncanny. This demonstrates the almost ubiquitous view of prosecutors and judges who, in the words of one jurist "do not view the victims' testimony as reliable evidence, despite its importance in view of the lapse of time since the crimes occurred and [additional] reality that these offences were committed by state actors and

³⁵ Alternatively, it could be argued that the cases are a result of a decision by the AKP to allow domestic litigation of human rights abuses in order to avoid future litigation before the ECtHR, although my research does not provide evidence of this. The willingness of the AKP to ignore human rights abuses during its own term in which it is arguably complicit (such as the Roboski/Uludere massacre in 2011) weakens this argument (Bia News Desk).

³⁶ Many cases are still being rejected in the first instance courts.

[therefore,] the strong possibility of spoliation of evidence.”³⁷As domestic legal remedies had been exhausted, human rights associations and domestic legal professionals submitted cases with relatives of the disappeared to the ECtHR.

The impact of these cases should not be underestimated. The ECtHR cases facilitated domestic prosecution once prosecutors and judges were willing to open cases, by providing investigation capacities above and beyond the capabilities of domestic legal professionals (Çali 2010). As explained in the *amicus curiae* brief submitted by a collection of Turkish organizations to the Turkish Constitutional Court in November 2014, the court has found Turkey in violation of the European Convention on Human Rights in a total of seventy-eight percent of the applications (*amicus curiae* 2014, 15). In nine percent Turkey resolved the cases before a decision was issued through a friendly settlement – indicating “responsibility of the Republic of Turkey is determinable in 87 percent of enforced disappearance cases” (*ibid.*). Judgments of the court cited violations regarding the right to life, the prohibition on torture, the right not to be arbitrarily detained and the right to access to domestic remedies. This process of supranational litigation has also affected the norm of individual criminal accountability, because ECtHR rulings often determine fault of individual military or government officials (although they do not rule on punishments at the individual level) (Interview #33).

The ECtHR proceedings were incredibly valuable in the process of legal mobilization also because the court documented all of their findings, making them available to both the state and civil society actors as well as to families. This created a more complete record of what had occurred, and served as recognition by a credible

³⁷ Private email correspondence April 1, 2015.

regional actor of state responsibility. The mobilization of law started at the domestic level and then branched off to also target the supranational level when domestic remedies were systematically exhausted (without trial) on a case-by-case basis between 1994 and 2008. Although this legal mobilization increased the ability of local actors to continue to mobilize domestically, the ECtHR cases do not explain why cases began to be opened domestically for the first time in 2008. Although it is true that Algerian cases have not had the extensive review accorded to them that the ECtHR has made possible for cases of enforced disappearance in Turkey, this still does not explain what allowed the Algerian and Turkish case studies to diverge in 2008 after they had remained in essentially the same situation for decades regarding domestic prosecution for crimes of the 1990s.

In summary, my field research refutes the claim that the human rights trials occurring in Turkey today are simply some sort of political revenge between competing clans. Legal experts from a variety of professional positions, some of whom participated in the trials, confirmed that although there were personal political feuds between the AKP/Gülen and the TSK (which were manifest in the coup trials), the men indicted in these human rights trials were those individuals who had carried out the worst human rights crimes of the 1990s. As stated by one interview subject with intimate knowledge of the trial proceedings “it was no longer possible [for the military and old guard] to protect them [perpetrators]” (Interview #38).

As detailed above, interviews with human rights activists and legal professionals indicated that the conflict between the TSK and the AKP facilitated the introduction of domestic prosecutions. Many of the human rights activists and legal professionals interviewed offered this idea as a critical factor for the opening of trials. One individual

disagreed outright with this analysis, arguing that the advancements in human rights should solely be attributed to the human rights movement of which they are a part (Interview #28).

In conclusion, this chapter outlines how changes in power empowering new actors at the expense of the military, have allowed for novel activity in the lower courts. Despite the fact that both Algeria and Turkey were at roughly the same stage in the spiral model, the two countries began to differ starting in 2008, largely because of the successful weakening of the military through coup trials led by the new civilian leaders. Whereas Algeria's progression in terms of the ICA norm stagnated in 2005 with the introduction of the amnesty law, Turkish courts become more willing to challenge the military's impunity once power had been concentrated among a new set of elites who were seeking to weaken the military's legitimacy.

CHAPTER SEVEN

AMNESTIES AND DOMESTIC TRIALS - ELITE POWER AS A KEY VARIABLE

Explanations within the literature on the emergence of domestic human rights trials fall into two broad categories: those that look at the question from an international perspective, and those that privilege variables within the domestic political. This dissertation has addressed these two literatures by breaking them down further into six specific arguments. Table 6 displays the six arguments and summarizes their ability to explain the outcome in our two cases. The table is similar to the one presented in chapter one, but now also includes the theoretical argument made in this dissertation regarding shifts in elite power.

This chapter is divided into two sections. The first will review the findings to this point in terms of these six current arguments within the literature, in comparison to the explanatory power of the theory proposed here regarding the divergence of the two cases since 2008. The second section will address some of the larger questions that this research evokes, in comparison to other cases and the importance of examining domestic trials.

Table 6. Explanations of the Emergence of Domestic Trials, Algeria and Turkey Compared

Theory	Explanation	Expectations for Algeria & Turkey	Outcomes Expected?
I	Linkage & leverage	Turkey should develop further than Algeria in terms of movement on the SM, given the stronger, more intricate links with the international community through the EU accession process and the ECtHR.	Not until 2008. No substantive change occurred within this variable to explain the divergence of cases at that time, but lack of divergence before.
I	Norms & TAN activity	One would expect generally the same outcome for both cases in terms of ICA since they both are at approximately the same place in the spiral model (stalled at tactical concessions).	Yes, until 2008 when trials opened in Turkey. This variable also does not provide a mechanism to explain the divergence in 2008.
D	Regime type	As a democracy with no amnesty law, one would expect Turkey to provide domestic legal recourse to victims. As an authoritarian regime, one would expect dramatically less domestic legal recourse for Algerian victims of abuses.	No, from the conflict period to 2008 both cases had the same legal obstacles for victims of abuses. After 2008, this variable does not explain the divergence in cases, as Turkey was already exhibiting more authoritarian tendencies (particularly in the judiciary), and has continued toward authoritarian rule.
D	Judicial independence	One would expect that Turkey's greater judicial independence to result in the facilitation of trials and Algeria's lack of judicial independence to result in significant obstacles to domestic trials.	Yes, in 2008, but does not explain the mechanism facilitating divergence of cases starting at that time. Despite a short improvement in 2010-2014, Turkey's judicial independence decreased overall from 2008 to the present.
D	Private Prosecution	One would expect that in Algeria, where private prosecution exists, domestic trials would have been facilitated. One would expect that in Turkey, where private prosecution does not exist at the lower instance level, trials would not have occurred.	No. The opposite occurred.
D	Power shifts among elite actors	One would expect similar lack of domestic trials in both cases until a shift in power occurred, as the same ruling coalition (military/security establishment) maintained power in both countries after the end of the conflict period. When domestic power shift occurs, one would expect trials to be facilitated.	Yes. When power shifted away from the ruling coalition in Turkey, trials began to be opened. No substantive change of the ruling coalition has occurred in Algeria: the amnesty law has not been challenged, no domestic trials have been opened.

Explaining Domestic Trial Emergence

International Level Explanations

The theories used at the international level of analysis to explain the emergence of trials are helpful in constructing a picture (although incomplete) of what facilitated a divergence between Algeria and Turkey starting in 2008. They do not, however, provide a clear mechanism by which the trials emerged. The linkage and leverage argument clearly explains why Algeria experiences ongoing normative pressure (usually in the form of critical statements) from INGOs, NGOs and some democratic governments, but also why none of this pressure has significantly affected the regime since the time that it reached the *tactical concessions* phase in the spiral model. Despite the pressure from condemnation by multilateral organizations and international human rights organizations, those entities capable of more coercive measures (state actors) have placed little concrete (material) pressure on Algeria to take substantive steps toward the recognition and protection of human rights generally, nor the ICA norm specifically.

Furthermore, there has been no substantive change in the linkage and leverage of Algeria and Turkey during the period of time in which trials emerged. If anything, as has been discussed above, this period of time has been rocky for the EU-Turkey accession process. It is still uncertain whether Turkey will ever fully join the EU. The linkage leverage theory is useful in describing the overall international context of the two countries. However, it cannot explain why in terms of the ICA norm the two cases resembled each other until the early 2000s but have been dissimilar since 2008. The other set of explanatory factors that draws on the international level of analysis are those

that point to the spread of norms, and their increasing domestic salience, through the systems of transnational action networks (TANs) that communicate grievances of domestic actors to regime leaders in target countries. Again, these theories explain some of the political phenomena in Turkey and Algeria, but since domestic cases had been filed (with no follow up) in both court systems starting in the early to mid 1990s, there is strong reason to believe that the ICA norm was already present among those actors at that time. These factors cannot explain the emergence of trials in Turkey, particularly since the regime has during this time also adopted increasingly authoritarian policies on many fronts. This authoritarian turn belies any lingering possibility that the AKP government is supportive of human rights norms. The international norms literature does help to pinpoint the weaknesses within the trajectory of both cases in terms of the domestic advancement of the ICA norm. However, the level of support for ICA among these grassroots activists, and that of government actors, does not explain the change that occurred in 2008.

In this sense, it seems that support for the ICA norm in non-democratizing contexts is a permissive condition but not sufficient to result in trials. For two reasons it is also likely that domestic level support for the ICA norm is a necessary condition for the emergence of trials. First, because of the lower susceptibility of regime leaders in these countries to pressures regarding democratization, it is unlikely that elite leaders will choose to support human rights trials when they themselves continue to use abusive tactics. Second, as the cases in Turkey demonstrate, it is necessary to have victim initiated complaints submitted to lower courts, in order for those courts to pursue

indictments. This means that legal mobilization is also a necessary but not sufficient condition for the emergence of trials in lower courts.

Although these international level theories cannot fully explain the emergence of domestic trials in Turkey and their lack thereof in Algeria, the global and regional contexts in which these two countries are situated are very influential in the changing environment of human rights norms. The state of human rights in each country cannot be divorced from the reality of geopolitical variables such as Algeria's substantial oil and natural gas reserves. As Azarvan (2010) points out, there is an important connection between Algeria's vast petroleum reserves and the current human rights situation, particularly because "countries in demand of Algeria's oil and gas have exercised restraint in criticizing Algeria's human rights record" (231). There have been no sanctions used by the United States, France or the European Union in response to Algeria's dismal human rights record. Additionally, to the extent that world powers are invested in the continuation of neoliberal globalization, there is little incentive for any of these powerful actors to foster change in Algeria (which would ultimately be to their material detriment).

Multinational corporations have benefited dramatically from the liberalization that occurred in the late 1980s and through the civil war, as growing foreign direct investment attests (Azarvan 2010). It seems that the dynamics of the civil war in Algeria actually created a more stable environment in the south of the country for foreign investment in oil companies, and Algeria's FDI skyrocketed at the height of the civil war

(from a low of \$10,000 in 1995 to 270 million in 1996, and over 1 billion dollars in 2001 (234). The material interests of international actors have affected domestic politics as well, resulting in the integration of both military members and “repentant Islamists” into the oil economy after the end of the conflict (Azarvan 2010, 235; Ammour 2012 citing Lowi 2003, 61-2).

These international interests have impacted the domestic political context in a number of other ways as well. First, multinational corporations and the international actors that benefit directly or indirectly from them have an interest in “frustrating efforts to explore alternative energy sources...[and therefore] prolong the country’s dependence on oil and gas” (Azarvan 2010, 246). By extension, this benefits those actors in the domestic environment who are implicated in hydrocarbon ventures. Entelis (2011) demonstrates convincingly that the oil sector has always benefited the ruling FLN party and the military, and this has not changed since the civil war. The continued reliance on hydrocarbons also means a continued reliance on the military to “rule but not govern” (Cook 2007), as the military is highly implicated in both the state run hydrocarbon sector (Entelis 2011), and multinational corporations that work in Algeria (Azarvan 2010, 235, 253).

Cook (2007) explained the particular political arrangement in Algeria (and Turkey and Egypt) as one in which there are two sets of institutions – those that are used as a civilian democratic façade, and those that actually serve to simultaneously control the country and perpetuate the military’s dominance. This results in “the current state of Algerian politics, where ‘psuedo-opposition’ groups are permitted to attack the policies

of the government but are barred, by sets of formal and informal institutions, from asking questions about the sources of power and legitimacy of the political order” dominated by the military (42). One cannot escape the similarities between the Algerian and Turkish systems, particularly as Turkey has, since mid-2015, moved once again towards authoritarianism that includes an increasing blurring of the line between domestic security and military activities in the southeast and beyond.

Domestic Level Explanations

There are also a variety of domestic level explanations that have been referenced throughout this work. First, in much of the literature dealing with justice after conflict, there is a connection made between regime type and its association with human rights (see Carothers 2002). This underlying theme of a “paradigmatic transition” to democracy paints change as movement toward democratic governance with pro human rights policies enacted by a new government that respects individual political and civil rights (Ni Aolin & Campbell 2005). These assumptions suggest a relationship between democracy and the provision of remedies regarding former violations, and that in authoritarian regimes justice is unlikely to be pursued. The Turkish case challenges this relationship. As has been show above, the more democratic Turkey maintained strikingly similar policies and practices in relation to relatives of the disappeared as those enacted in Algeria (a clearly authoritarian regime). Furthermore, when initial advancement in terms of justice mechanisms did begin in 2008, it was within the context of substantial antidemocratic use of the judiciary through the coup trials and the overall decline of democratic safeguards within Turkish government since that time.

Two additional variables are posited within the literature on the emergence of trials, which help to advance the analysis of the Turkish case here: judicial independence and private prosecution. The presence of both variables should in theory lead to domestic trials. However, as shown above, judicial independence cannot explain the emergence of the trials nor the full extent of the trial activity in Turkey. Private prosecution fails to explain their emergence in the lower courts, and their lack of emergence in Algeria, a country where private prosecution exists on the books at all levels of the court system. These variables are useful for a detailed analysis of the dynamics of the two cases but ultimately do not answer the questions we set out to resolve.

Domestic Power Shifts

I contend that the redistribution of power that occurred in Turkey between 2002-2008 allowed for ongoing legal mobilization to impact lower level judicial actors in new ways. Once the new balance of power undermined the military, individual judges and prosecutors took risks they previously eschewed. This shift in power indicated that breaching the status quo (impunity for military crimes) would no longer result in certain professional punishment. Some of the indicators were the history of antagonism between the new ruling elites and the military; the revelation of coup trials (in which high level military officials were indicted, tried, sentenced and jailed for crimes against the state); the collection of evidence by state prosecutors regarding enforced disappearances in the process of preparation for the the coup trials; and the media report of the dispersal of case files on enforced disappearances to prosecutors. The opportunity structure for lower level judicial actors (prosecutors and judges) therefore changed, and trials began to be accepted

in some jurisdictions of lower courts. A focus on the changes in power among elite actors helps to explain why despite the fact that Algeria and Turkey exhibited very similar characteristics on key variables, the two cases diverged from 2008 to 2016.

The question remains of whether this variable can also shed light on the current situation in Algeria? The Boutfeliqa regime *has* been credited with changes to the domestic security apparatus and military, particularly through the forced retirements of almost all of the leading figures that controlled the security apparatus during the failed democratic opening and the civil war (Brahimi 2016). In particular, the removal of General ‘Toufik’ Mediène in September 2015 was a dramatic change. If there were one person implicated in all of Algeria’s political changes over the last two decades it was Mediène, who as head of the DRS since 1992 maintained his position through five presidential administrations during and after the civil war. Boutfeliqa removed him, according to Brahimi for his “effort to investigate corruption on Sonatrach, the state hydrocarbon company – specifically its pro-Boutfeliqa former head, Chakib Khalil” and for his poor performance in response to the attack at In Amneas (Tiguentourine) in 2013 (2016). Furthermore, the removal of Mediène should be understood in the wider context of the progressive removal by Boutfeliqa of most of the elite military and security leaders from the time of the civil war. By 2006 the president had ushered in a “new crop of officers...promoted to command positions” (Cook 2007, 61).

However, these changes have affected the appearances of the power distribution, but have not necessarily been consequential for rule of the institutions. There has been no real civilianization of the Algerian system, or a public undermining of the military as

occurred in Turkey. As Ammour (2012) points out, the much celebrated end of emergency rule in 2011 (in the midst of the Arab uprisings), was accompanied by a less publicized expansion of the military's purview over security affairs. The presidential decree No. 11-90 which officially brought an end to the emergency rule also granted the military exclusive control over the fight against terrorism, entrenching military activity into what was once the domain of police and domestic security teams. This policy has literally militarized the civilian law enforcement arena (Ammour 2012, 36). The result was to free "the armed forces engaged in counter terrorism operations from the supervision of the Head of the Government [PM]...other civilian authorities...and from providing them reports as had previously been required" (ibid). In contrast, in January 2016 the President disbanded the former DRS¹ and created a new security administration, under the authority of the presidency (Brahimi 2016). At the time of writing, it is difficult to determine the long-term impact of these changes. It is possible that they will merely be similar to earlier policies within the tactical concessions framework. Or they could have longer-term effects and more profound consequences for the reigning legitimacy of the military.

The Turkish case also indicates to us that domestic legal activity – even activity that is obviously non-democratic and weakens the rule of law – can actually facilitate other legitimate legal ventures, such as the trials of military members in lower level courts. In Algeria, there have been a few recent court cases of military officials by the civilian government, that have appeared to perhaps be possible avenues on which

¹ The DRS served as the main intelligence administration for decades and was a very contentious actor

domestic human rights groups could capitalize, to shed light on military human rights crimes (“L’Affaire du Général Hassan”, 2015; see also Entelis 2011 on the Sonatrach affair). These court cases have been scandalous, in the sense that they target high level military officials, or those closely associated with them and signal a drastic turn of events for their personal and professional reputations. However, the cases have remained simple attacks on specific individuals, not the institution of the military itself, or its policies. They may be indications of growing fissures within the ruling military establishment and the civilian government, but as most things in Algeria today, they do not seem likely to break open until the imminent but unpredictable death of the aging and ill president Bouteflika. As of now, these court cases have not provided the type of opportunity for human rights activists to change the narrative regarding military crimes, as occurred in Turkey since 2008. This opportunity to contest the hegemonic narrative of the regime is the most important legacy of the human rights trials in Turkey.

Finally, it should be noted that, the balance of power has once again changed in two major ways over the last two years. As mentioned above, there has been a very public split between the AKP and Gülen sympathizers (who were strong in the judiciary and police). Second, the changing regional environment has strengthened the military, as security concerns have increased dramatically with the ongoing Syrian civil war and the rise of ISIS in neighboring Iraq and Syria. Had these most recent changes in power not occurred, it is quite possible that the series of human rights trials observed here would have moved forward more substantially. In this way, the theory of redistribution of power can also provide some insight into why the trials have stagnated. The final section of this

chapter will explain why their discursive power is still very important, despite the lack of concrete legal outcomes from this series of human rights trials.

Conclusions and Larger Implications

The civil wars in both Turkey and Algeria have legitimized the ruling military establishments, simultaneously in the domestic and international realms thanks to their experience in “wars on terror.” Speaking of Algeria, with great relevance for Turkey as well, Azarvan explains that “through terrorism... the government builds domestic... and international support for its own confrontation against” anti-government groups so as to capture further aid, which in the case of Algeria has contributed to “hundreds of millions of dollars in arms imports” (Azarvan 2010, 239). The Turkish military similarly benefits dramatically from its long history of fighting the PKK and its ability to depict this conflict as one that should be solely understood as a fight against terrorism.

This logic was only encouraged and given greater legitimacy with the events of September 11, 2001, which changed Algeria and Turkey in the eyes of many democratic countries from regimes suspect of human rights abuses during their internal civil wars, to important experts on successfully fighting domestic (and by extension) international terrorism (Azarvan 2010, 238-240).² Risse Ropp and Sikkink recognized the impact on human rights norms, admitting that “the presence of a significant armed insurgent movement in the target country can dramatically extend [the denial stage], by heightening domestic perceptions of threat and fear” (1999, 23). These domestic (and

² One indication of the fluidity of the fight against terrorism and the approach to human rights is the fact that the former head of the ONDH (the first governmental organization created to accept complaints of human rights abuses), Kamel Rezag Bara, currently serves as the councilor to the president on security affairs and terrorism.

now international) perceptions are a key ingredient for regimes attempting to maintain control over the story being told about their respective conflicts. The Algerian and Turkish cases demonstrate that the strategic use of the terrorism can also stagnate regimes further along in the spiral model process. The terrorism logic is not only effective at a domestic level, but also in terms of international actors who are prone to pressure human rights abusing regimes.

Since 2005, the simultaneous discursive emphasis by the Algerian regime on the democratic nature of the amnesty and the continued threat of terrorism has meant that progress has stagnated in terms of argumentative exchanges that might pull the regime into further concessions. This same process continues to occur in Turkey. When looking at the two cases together, the similarities are striking. Both have managed to hold off international pressure (whether material or normative) to move past the tactical concessions phase, particularly by emphasizing the threats of domestic terrorism and its relationship to international order (Azarvan 2010).

This terrorism logic should be understood as a conflicting domestic norm that is being propagated by these two target regimes (Bras 2005-2006). In fact, in contexts of transitional justice or post-conflict justice, the contention between two reoccurring narratives is apparent: one emphasizing terrorism, the barbaric nature of war and the bravery of state forces, and another which redefines counterinsurgency activities as state crimes violating human rights of citizens, and emphasizes ongoing impunity for those crimes (Lessa 2013, 100). In the case of Algeria, Bras (2005-2006) explains that

“Under international treaties against terrorism and resolutions adopted by the UN, the three [Maghreb] states were able to introduce

laws that severely restrict civil liberties and jeopardize the exercise of fundamental rights under the guise of their ‘support to international efforts against terrorism’. The implementation rules for these new texts confirm a halt of or a decline in the democratic process that, admittedly, is not specific to the region. This process benefited from a double boost: through internal claims made by national politics actors and civil society activists, and external claims, conveyed through the multiplication of international partnership relations that were accompanied by political conditionalities, putting pressure on States in the region and leading [them to] ratify international human rights protection mechanisms year after year. However, the war on terrorism has resulted in separating international arrangements between those that are dedicated to the eradication of terrorism and those aiming to promote human rights and political freedoms, which weakens the latter in favor of the former” (452).

To the extent that the regimes are able to effectively tell the story of these two conflicts (and their ongoing legacies) as one that is most strongly characterized by barbaric terrorism, they are able to hold off international pressure to address the human rights violations that occurred in their respective insurgent-civil wars.

Significance of Domestic Trials for Contexts of Civil Wars

The root causes of Algeria and Turkey’s respective civil wars have not been resolved. Neither regime has definitively addressed the grievances of insurgent groups and the dominant narrative regarding the conflicts obscure the legitimate demands of victims and activists alike. This conclusion elicits an important question: what is the actual importance of these domestic trials in Turkey?

A realistic appraisal of the court proceedings in Turkey necessitates the recognition that in the latter half of 2015 there have been indications that the cascade of human rights trials could be closing down. The Supreme Court of Appeals closed one case with the acquittal of the main defendant (Musa Çitil in May 22, 2015 (also known as

the Court of Cassation, the *Yargıtay*) (Faili Belli 2016). Three additional trials have recently led to acquittals by lower courts after multiple hearings, at least two of which are moving toward appeal before the *Yargıtay*. According to one of the human rights organizations familiar with these cases, these two trials are likely to end in acquittals in the appeal of the main defendants as well (Cemal Temizöz and Mete Sayar).^{3 4} Additionally, in June 2016 the parliament approved legislation complicating the further indictment of military actors for activities carried out in the counter-terrorism campaigns (fighting against the PKK in the southeast).⁵ For now this new law is not retroactive and therefore should not have an impact on the pending cases. However, it clearly communicates that further cases should not be opened. This could very likely be explained by the increasing intensification of the security situation in Turkey in the latter half of 2015, which has resulted in a renewed alliance with the TSK.

It is also worth noting that the general sentiment among those interviewed was that trials have so far been unsuccessful. Many human rights activists, legal professionals and relatives were optimistic when indictments were first issued but expressed disappointment with what they perceive as their minimal concrete outcomes.⁶ As one man, whose father, brother and cousins were forcibly disappeared, explained “these

³ Private email communication, September 17, 2015.

⁴ Two of the ongoing court cases (#8 and # 13 on the table) were also merged into one case.

⁵ The law requires administrative approval for the indictment of military members – an extra step likely to completely prohibit trials of this kind. See footnote 113.

⁶ E.g., Interviews # 11; #27; #3; #23; #40.

[trials] are only formality – none of them have concluded [or] led to a proper resolution. None of them ease the peace process or the families' pain" (Interview #27). This perspective was widespread among relatives and even some human rights activists, demonstrating that at the micro level, the trials in Turkey have felt very inadequate.

However, when looking at the trials as a series of similar phenomena, and thanks to the documentation by NGOs active in the cases, it becomes apparent that some substantial has occurred through the domestic trials. The trials have resulted in 1) the introduction of the first legally recognized witness testimony in domestic courts against former military officials detailing human rights violations (and included in indictments); 2) extensive investigation of crimes (usually by lawyers for the victims) revealing mechanisms of impunity contributing to human rights violations as well as the identity of alleged perpetrators; 3) the ordering by multiple courts of exhumations and identification of human remains (an often repeated goal of families); and 4) the detention of some former and current military officials in relation to human rights crimes (Truth Justice and Memory Center, 2014).

Furthermore, the presence of these trials is important not only for substantive progress of this kind, but also because recent research indicates that the entire trial process, including indictment, preventative detention and trials that do not end in conviction, can have an impact on the likelihood of future repression even in the hard cases such as contexts of ongoing violence (Kim & Sikkink 2013, 281). The most promising cases among the series examined here are those before the Constitutional Court (which has since 2013 upheld a number of rights claims against the AKP

government). This is particularly important as the Constitutional Court continues to be one of the only government institutions willing to habitually and directly counter the executive (Özbudun 2015, 53).⁷ Although activists and lawyers were for the most part pessimistic about the drawn out nature of the ongoing domestic trials,⁸ multiple individuals expressed hope and optimism about the possibility that the Constitutional Court would rule in favor of human rights.⁹

As a distinct phenomenon, these human rights trials are contributing to countering the hegemonic discourse of the government which has been recognized as important in countries dealing with the past (Lessa 2014). They have provided the first venues for a legally recognized counter-narrative, one that refers to security forces' behavior in the 1990s as human rights crimes, as opposed to the fight against terrorism (which was not achieved in the international cases seen at the ECtHR. Çali 2010, 332). This counter-narrative should not be underestimated. Multiple trials have, upon request from defendants' lawyers, been moved to locations far from the scene of the crime and often to areas with strong traditional republican support of the military. This indicates that the military officials being targeted (and their lawyers) are worried about the effects

⁷ The most recent manifestation of this willingness occurred when the Court ruled for the release of Can Dündar (Cumhuriyet Editor-in-Chief) and Erdem Gül (the Daily Ankara's Bureau Chief) from preventative detention on terrorism charges related to their respective press activities that are widely considered to have threatened the executive leadership ("Arrested Turkish Journalists Released After 92 Days in Prison" *Hürriyet Daily News*, February 26, 2016, <http://www.hurriyetdailynews.com/arrested-turkish-journalistsreleased-after-92-days-in-prison.aspx?PageID=238&NID=95723&NewsCatID=339>. Accessed February 29, 2016.

⁸ This fits the profile of human rights trials generally, even in states that are more certainly moving toward more robust democracy (Michel & Sikkink 2013).

⁹ Interview #24, 12/26/14, Istanbul; Interview #41, 12/18/14, Diyarbakir.

of the counter-narrative.¹⁰ Recent scholarship has recognized the relationship between counter narratives and transitional justice, particularly because of the use of memory as a political tool, and “an integral and central component of the practices and policies regarding the past” (Jelin 2007, 139, 156; Barahona de Brito, Gonzalez-Enriquez and Aguilar 2001; Lessa 2013; see also Osiel 1986).

The possible contribution of domestic trials to the countering of the dominant (regime promoted) narrative is particularly important in cases of insurgent-civil wars because these counter narratives can attack the root problems that have caused the initial conflicts (in both Algeria and Turkey): namely the military establishment’s shadowy rule and the inability of the civilian systems of governance in either country to affect the real mechanisms behind the functioning of the state. Publicly naming military activity as “human rights crimes,” directly attacks the story that these institutions are primarily involved in “counter-terrorism activity.” The language of relatives, activists, and legal professionals advocating for them seeks to delegitimize the countering norm of the fight against terrorism.

In conclusion, the comparative case study presented here has shown why it is important to examine non-democratizing cases to better understand the dynamics of the ICA norm. Through ethnographic research in Algeria and Turkey, this dissertation has contributed to the literature by pointing to a novel variable, which helps to explain the paradoxical similarities between Algeria and Turkey up until 2008, and their similarly surprising differences since that time.

¹⁰ Interview #3 1/18/15, Istanbul; Interview #35 12/26/14, Istanbul.

APPENDIX

Appendix I: Interview Scripts

Interview Script for Relatives

1. I know that you are working with this organization because of your relative who was disappeared. Could you please tell me about what happened?
2. What were your initial hopes in your work with this organization? Are they the same things you hope for now?
3. Why did you choose to work with this organization and not others?
4. What is the most important way to address enforced disappearances in your country, and why?
5. Relatives of the disappeared in different countries have advocated for various ways of addressing this tragedy: truth commissions, forensic investigations to determine the truth, amnesty laws to forget and move on, prosecution of those individuals responsible, reparations paid to the families by the state. Which of these, or other responses seem the best for you and your family?
6. If you could imagine a time when the cases of disappearances have been fully dealt with, a time when you would be at peace with what has happened, what would it be characterized by?
7. Do you think putting individuals responsible for these violations on trial is a form of revenge? Why/Why not?
8. If you had to personally rank your goals [in working with this organization] starting with those that are the highest priority, what order would they fall into? For example, is knowledge of the fate of the missing more important than prosecuting those responsible?

Do you think that public awareness and condemnation of past crimes is more important than putting individuals responsible for these crimes on trial?

9. (If prosecutions are desirable for you) what would have to change for prosecutions to occur in your country?

Interview Script for Human Rights Activists

1. Please tell me about how you first started working with this organization?
2. What were your initial goals in your work with them? Are they the same goals you have now? What are your long term goals?
3. Why did you choose to work with this organization and not others?
4. Have you patterned your work after the examples of other organizations or movements?
5. What is the most appropriate way to address enforced disappearances in your country, and why?
6. Are you concerned that putting individuals responsible for these violations on trial may undermine political stability and threaten reconciliation? Why/Why not?
7. Do you think putting individuals responsible for these violations on trial is a form of revenge? Why/Why not?
8. It is likely that you have multiple goals that you would like to accomplish in your work with this organization. If you had to personally rank your goals starting with those that are the highest priority, what order would they fall into? For example, is knowledge of the fate of the missing more important than prosecuting those

- responsible? Do you think that public awareness and condemnation of past crimes is more important than putting individuals responsible for these crimes on trial?
9. If you could imagine a time when the cases of disappearances have been fully dealt with, a time when you would be at peace with what has happened, what would it be characterized by?
 10. Why do you think some cases have been prosecuted and others have not (Turkey)?
 11. Are certain cases easier to bring to trial?
 12. Why do you think cases are coming to prosecution now, as opposed to ten or fifteen years ago (Turkey)?
 13. What are the effects of the ongoing prosecutions on the relatives of victims (Turkey)?
 14. Do any political groups benefit from these prosecutions (Turkey)?
 15. What would have to change for prosecutions to occur in your country (Algeria)? 16. Are prosecutions for enforced disappearances a priority for you? Are they appropriate for your country?

Interview Script for Legal Professionals

1. Please tell me about how you first started working on cases of enforced disappearances?
2. Has your work on these cases been different than on other types of cases? Has this had an impact on your ability to work on other types of cases?
3. What would you say are the legal options currently available in your country for cases of enforced disappearances?
4. What are the public responses to those options, among the broader public, and those most closely affected by disappearances?

5. What would be the most effective way to address enforced disappearances in your country, and why?
6. Are you concerned that putting individuals responsible for these violations on trial may undermine political stability and threaten reconciliation? Why/Why not?
7. Do you think putting individuals responsible for these violations on trial is a form of revenge? Why/Why not?
8. Are there aspects of the crime of disappearances that make them legally different than other types of cases?
9. Why do you think some cases have been prosecuted and others have not (Turkey)?
10. Are certain cases easier to bring to trial?
11. Why do you think cases are coming to prosecution now, as opposed to ten or fifteen years ago (Turkey)?
12. What are the legal effects of the ongoing prosecutions on the relatives of victims (Turkey)? And on the legal community, or you as a legal professional working with them?
13. Do any political groups benefit from these prosecutions (Turkey)?
14. What would have to change for prosecutions to occur in your country (Algeria)?
15. Are prosecutions for enforced disappearances a priority for you? Are they appropriate for your country's context?

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