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HUMAN RIGHTS COMMITTEE

Ninety-first session

SUMMARY RECORD OF THE 2494th MEETING

Held at the Palais Wilson, Geneva, on Tuesday, 23 October 2007, at 10 a.m.

Chairperson: Mr. RIVAS POSADA
later: Ms. PALM (Vice-Chairperson)

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 40 OF THE COVENANT (agenda item 6) (*continued*)

*Third periodic report of Algeria (CCPR/C/DZA/3; CCPR/C/DZA/Q/3;
CCPR/C/DZA/Q/3/Add.1)*

1. *At the invitation of the Chairperson, Mr. Jazaïry, Mr. Mokhtar Lakhdari, Mr. Abdelwahab, Mr. Said, Ms. Bouregghda, Mr. Tilmatine, Mr. Soualem, Mr. Bessedik, Mr. Saadi, Mr. Akir, Mr. Abdelali Lakhdari, Mr. Toudert, Mr. Chabane and Ms. Hendel (Algeria) took places at the Committee table.*

2. Mr. JAZAÏRY (Algeria), introducing the third periodic report of Algeria, said that Algeria had very carefully carried out its obligation under article 40 of the Covenant, and wished thereby to demonstrate, as it had always done, its commitment and determination to continue the open and mutually advantageous dialogue it had had with the Committee since 1992. That year, despite the ruinous terrorism that had erupted in its territory, the Algerian State had managed to fulfil its treaty obligations. His country wished to reaffirm at the present meeting its desire to continue to work for the promotion and protection of all human rights. Since the Committee had last considered the human rights situation in the country, Algeria had continued its efforts to bring its legislation in line with universally recognized human rights norms by working to make its laws modern and effective for the benefit of the citizens. Along with the relevant constitutional provisions, the main body of domestic laws needed for the promotion and monitoring of compliance with those norms had been set up. Algeria had acceded to the seven international human rights instruments, which had been incorporated into its legislation. In March 2003 it had acceded to the International Convention on the Political Rights of Women and in January 2005 to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

3. For Algeria, human rights issues brought back memories of a painful history: first, the resistance to colonial domination, and then willing supreme sacrifices to gain liberty and mastery of their destiny for the people. In the name of deathless humanistic values, Algeria had waged its national emancipation and liberation struggle, and recently it had had to struggle against terrorism. Determined to establish a genuine democracy, Algeria had rejected vague efforts to impose foreign doctrines that were incompatible with human rights and democratic values. That was the meaning of the Algerian State's battle against religious extremism and the bloody violence that had accompanied such extremism. For 10 years Algeria had fought alone against the scourge of terrorism and it had only been the attacks of 11 September 2001 and other tragic events elsewhere in the world that had forced the international community finally to take stock of that threat to international peace and security and commit to a collective and concerted effort to confront it. The report under consideration covered the period from 1999 to 2006. From 1999 on, Algeria had chosen a path leading to peace and stability based on an ambitious programme of economic growth. Initiatives seeking to re-establish concord had been overwhelmingly approved in referendums. The Algerian people had shown clemency to those who had gone astray but had not caused deaths or injuries; on the other hand, those who had committed crimes had been brought to justice in full respect for the law.

4. The policy of national reconciliation had been supported by numerous reforms, focused, in particular, on the State, education and justice. The Family Code, the Code of Algerian Nationality and provisions dealing with the protection of children

had been revised. The death penalty had been eliminated for certain crimes and a moratorium on executions had been in force since September 1993. In order to strengthen the independence of the justice system, two organic laws had been adopted: one providing judiciary regulations and the other on the Supreme Council of the Judiciary. The administration of a justice system with greater accessibility had required a denser distribution of courts, a simplification of procedures and a strengthening of the means for executing decisions.

5. In order to provide assessments of progress in the human rights field, Algeria had established a national human rights institution, the Advisory Commission for the Promotion and Protection of Human Rights.

6. The redefinition of Algerian identity had made great progress with the initiative taken by the President of the Republic in 2002 to have the Constitution amended to make Amazigh one of the national languages. A High Council for Amazigh Affairs had also been established.

7. Those new developments all attested to the will of the Algerian State to give pride of place to fundamental freedoms as it established a modern State based on law, while fully aware of the difficulties that that entailed. In that framework it intended to continue dialogue and cooperation with competent bodies of the United Nations in full confidence and transparency.

8. The CHAIRPERSON thanked Mr. Jazaïry for his presentation and congratulated the State party on the size of its delegation and on the fact that it included specialists, which would facilitate dialogue with the Committee. He invited the delegation to respond to questions 1 to 15 of the list of issues.

9. Mr. LAKHDARI (Algeria) noted that the international instruments to which Algeria was party prevailed over domestic legislation and that the courts were aware of that fact. They had determined in several cases that article 407 of the Civil Procedure Code, which authorized imprisonment in cases involving commercial matters and financial loans, was inconsistent with article 11 of the Covenant. Those decisions had been upheld in a series of rulings by the Supreme Court since 2001. They had been published in the *Official Gazette*, to which members of the wider public, students and scholars had access, and had been the subject of many commentaries and discussions.

10. Mr. SOUALEM (Algeria), responding to question 2 on the list of issues, wished to add information on the national institution for the promotion and protection of human rights. A ministry on human rights matters had been established in 1991 and in 1992 a National Human Rights Observatory had been established to promote human rights in Government bodies. Its mandate had ended in 2001 and a National Advisory Commission for the Promotion and Protection of Human Rights had been established, in accordance with the Paris Principles. The Commission was a pluralistic body with 44 members, including 16 women, which consisted of representatives of civil society, human rights implementing institutions, human rights defence organizations, the two chambers of Parliament and various ministries. Representatives of Government institutions had no vote in decision-making. The Commission prepared an annual report on the human rights situation in the country and sent it to the President of the Republic, who determined the guidelines for implementation of the report's recommendations. Several of those recommendations had been taken into consideration by the Commission on the Reform of the Justice System and they were gradually being implemented. Furthermore, at the request of the President of the Republic and in accordance with the Vienna Plan of Action, the

National Advisory Commission, working with various stakeholders, had also prepared a national report on the human rights situation, which the Commission on the Reform of the Justice System had also found useful.

11. Mr. LAKHDARI (Algeria) said, in response to question 3 of the list of issues, that more than 7,000 people had benefited from pardons and amnesties, of whom 2,500 had been in detention. With regard to the implementation over time of Ordinance No. 06-01, which sought to give effect to the Charter for National Peace and Reconciliation, the Charter applied only to facts predating its entry into force. Under the criteria used to determine whether a person could be covered by an amnesty, the law excluded certain categories of people, such as people convicted for terrorist bombings, rape or massacre. Other people who had been prosecuted or convicted under provisions covered by article 2 of Ordinance No. 06-01 had benefited from the discontinuation of criminal proceedings against them, and the numbers cited referred mainly to that group of people. The termination of Government prosecution was granted on the basis of judicial procedures. Turning to question 4, he said, with regard to the impact of articles 45 and 46 of Ordinance No. 06-01 on the right to submit individual communications under the Optional Protocol, that the provisions in the Ordinance applied only domestically and therefore did not prevent Algerian citizens from using mechanisms available under the Covenant or other international human rights instruments to which the State was party.

12. Mr. SOUALEM (Algeria) added that each time that the Algerian Government had been presented with a communication submitted under the Optional Protocol, it had cooperated with the Committee in good faith and had provided responses as well as additional explanations and comments. It had always been willing to respond to allegations and keep the Committee informed of developments in the case. It should be pointed out, however, that the understanding and description of the facts presented by the authors of complaints was not always exact; there were even instances when the truth had been distorted for political reasons. When the Committee's findings revealed that there were aspects of the case that the domestic courts had had no knowledge of when they had considered the facts and that were likely to influence the court's decision, the law allowed for the possibility of retrial. It should be stressed that people were not prosecuted for having criticized the Charter for Peace and National Reconciliation. Citizens were free to express themselves and to bring matters to the Human Rights Committee under the procedures established by the Committee.

13. Ms. BOUREGHDA (Algeria) said that no legislative provision prohibited or restricted the participation of women in the political life of the country. On the contrary, greater participation of women in decision-making and the higher functions of the State was strongly encouraged, in particular through awareness-raising campaigns. Those efforts had borne fruit, inasmuch as women constituted 46.49 per cent of those voting in the presidential elections of April 2004 and in 2007, the percentage of female members of Parliament had risen from 6.94 to 7.75 per cent.

14. Mr. ABDELWAHAB (Algeria) said that there were no criminal provisions that specifically targeted perpetrators of violence against women. There was also no specific definition of the crime of "marital rape" in the Algerian Criminal Code. The courts and jurisprudence considered any sexual act committed with violence against a female person, whether that violence was physical or moral, to constitute the crime of rape. The definition in court decisions did not exclude sexual relations imposed by a husband on his wife. In 2005, out of 16,774 prosecutions for acts of violence committed against women, 14,016 had led to convictions; in 2006, 17,383

such actions had been brought and 14,054 had led to convictions. With regard to sexual harassment, 175 cases had been brought to trial in 2005 and 137 had led to convictions; in 2006, 267 out of 325 cases in court records had led to convictions.

15. Ms. BOUREGHDA (Algeria) added that the Ministry of the Family was aware of the problem and had developed a national strategy to combat violence against women, with the goal of contributing to the protection of human rights through the elimination of all forms of discrimination and violence against women.

16. Mr. ABDELWAHAB (Algeria) said that the revised Family Code provided better protection of women's rights and greater equity between the sexes. Before, the conclusion of a marriage was handled for a woman by her *wali*, who could be her father or a close relative, whereas now, revised article 11 of the Family Code stipulated that a woman could contract her marriage herself in the presence of a *wali*, who could be her father, a close relative or any other person of her choice. That was a significant change, as a woman now contracted her marriage herself in the presence of a guardian of her choice.

17. It was true that a Muslim could not marry a non-Muslim, unless that person demonstrated willingness to convert to Islam, but that provision, which was based on the sharia, was in force in most Muslim countries. In that connection, the amendments to the Family Code had led to a public discussion in Algeria, one that was still going on, as to whether the legislature should take into account developments in society or whether it should anticipate those developments. In any event, some sociological realities could not be swept away at a single stroke.

18. The Family Code did not stipulate that a divorced woman who remarried lost custody of her children, only that the custody of boys, always given to the mother, ended at 10 years of age and that a judge could extend custody until the age of 16, unless the mother remarried. In fact, it was always the higher interest of the child that prevailed, and there had been few cases where boys had been removed from the custody of their mother because she had remarried. Divorce by *khul'*, i.e. divorce at the request of the wife, was one of three types of divorce allowed under the law: divorce by mutual consent; divorce at the request of the husband; and divorce at the request of the wife. That allowed the wife to break the conjugal tie without having to formulate a complaint of any kind. On the other hand, the husband could request compensation equivalent to the amount of the marriage gift, but it should be noted that the woman had the same entitlement if her husband requested the divorce. The *khul'* had been adopted despite the reluctance, even resistance, of certain conservative groups.

19. Mr. AKIR (Algeria), turning to question 4, said that the state of emergency had been declared in conformity with the Constitution of Algeria and the provisions of the Covenant, and that the Secretary-General of the United Nations had been duly informed. It in no way hampered the enjoyment of individual and collective freedoms: it had been eased and all measures adopted under that condition were gradually being revoked. The measures still in force were confined to police functions assigned to the army in urban settings so as better to ensure public order and security and to prosecute and punish those guilty of committing terrorist acts. The impact of the state of emergency on the everyday life of the people and the enjoyment of human rights was nearly zero. The state of emergency would be lifted when the circumstances that had led to its declaration no longer existed.

20. Mr. ABDELWAHAB (Algeria), responding to question 9 of the list of issues, said that article 97 bis of the Criminal Code classified a terrorist act as any act

directed against State security, territorial integrity and the stability and normal functioning of institutions that used methods that violated the right to life, the fundamental freedoms of citizens and the safety of public and private property. Measures adopted by the authorities to avert or reduce the threat of terrorist activities included dissemination of awareness-raising messages in the media, involvement of civil society in maintaining alertness, strengthening security in vulnerable sites and the establishment of a toll-free number.

21. Turning to question 10, he said that the death penalty had not yet been abolished but a moratorium on executions had been in effect since 1993 and, after various successive revisions of the Criminal Code since 2001, several crimes, such as economic sabotage, were no longer punishable by the death penalty, or were punishable by imprisonment for life or for various terms, such as embezzlement, aggravated armed robbery, counterfeiting money, adulteration of food or medicines with fatal consequences, arson and drug trafficking. Furthermore, the death penalty was rarely imposed in cases of ordinary law and, when it was, it was often commuted to imprisonment.

22. Mr. SOUALEM (Algeria) said, with regard to question 11 on the follow-up to allegations of summary executions, torture or ill treatment committed by State officials, that every Algerian citizen was entitled to submit a complaint to a court when he felt that his rights had not been respected. In recent years, the special human rights procedures of the United Nations had not forwarded to the Algerian Government any communications relating to cases involving summary, extrajudicial or arbitrary executions or to specific cases of torture. Complaints against State officials gave rise to disciplinary or administrative measures or, if appropriate, court proceedings. Although there was much talk of such matters in the literature submitted by non-governmental organizations (NGOs), as could be seen in the shadow reports submitted to the current session, Algerian courts considered individual complaints that seemed well founded and gave them the appropriate follow-up.

23. Mr. TILMATINE (Algeria) said that compensation for victims of the national tragedy under Presidential Decree No. 06-93 could be the result of a decision by the competent civil court or of an agreed settlement between the victim and the Government authority whose official had committed the violence at issue. In the context of the implementation of the Charter for Peace and National Reconciliation, the State had established a special schedule for compensation for the rightful claimants in respect of people who had disappeared, as well as for the families of deceased terrorists, where those families could be shown to be of modest means. The mechanism provided under Ordinance No. 06-01 complemented provisions of the Act on Civil Concord, which had established the State's responsibility by subrogation in compensation actions brought before the courts against repentant terrorists. It should be stressed that the State's actions to assist victims of the national tragedy were not limited to financial measures but also included various social and psychological assistance measures.

24. Mr. SOUALEM (Algeria), responding to question 12 of the list of issues, said that the Ad Hoc National Commission on Disappeared Persons, which had been established on 11 September 2003 by the President of the Republic for an 18-month term, had immersed itself in analysis of the problem and had engaged in contact with the families. The Commission's report could be made public only by decision of the President of the Republic.

25. Mr. LAKHDARI (Algeria) explained that, in order to request compensation, the families of disappeared or deceased persons had to obtain a death certificate. The decisions handed down by civil courts could be appealed to compensation commissions established in all provinces of the country to make justice more accessible for the families. By 30 September 2007, 2,958 deaths had been certified.

26. Mr. TILMATINE (Algeria) added that compensation for impoverished families had strengthened social cohesion, as the national tragedy had created a severe social fracture in the country. Under Ordinance No. 06-01, which implemented the Charter for Peace and National reconciliation, 11,547 cases had been filed with the various bodies established for that purpose in the 48 *wilaya* or provinces of the country. Out of that number, 6,233 had been admitted and in June 2007, 3,766 had been settled. The budgetary allocation for compensation to be paid to family members and rightful claimants was 28,280,000 euros. Compensation, in the form of a monthly allowance or a lump sum, was complemented by social assistance, with special focus on children, which included summer camps and therapy programmes. Measures were also taken to socially reintegrate people involved in terrorist acts who had themselves not committed serious crimes.

27. Mr. LAKHDARI (Algeria) said that, although the Family Code provided for a four-year wait before a death certificate could be obtained for the submission of a complaint in court, Ordinance No. 06-01 made no such provision and even had a retroactive effect, as death certificates issued before its entry into force could support a request for compensation.

28. Mr. JAZAÏRY (Algeria) noted that a request for a death certificate did not imply that the family in question waived its rights to other remedies under the law.

29. Mr. ABDELWAHAB (Algeria), responding to question 14 of the list of issues, said that there were, as far as he knew, no incommunicado detention facilities. All detention facilities were registered and were under the authority of the prosecution service, which also controlled police custody sites managed by the gendarmerie and the police. Detention facilities under the authority of the military justice police were controlled by the military court and the military prosecutor. They were used exclusively for people who had committed military crimes. Furthermore, under the agreement it had signed with Algerian authorities in 1999, the International Committee of the Red Cross had conducted periodic visits to all detention facilities. In 2003, it had requested the extension of such visits to police custody facilities, which the Algerian authorities had agreed to, both to show their spirit of openness and to strengthen their collaboration with the Red Cross. It had been authorized to carry out unannounced visits since 2004.

30. Each place of detention had a prison register that was checked and initialled by the Prosecutor of the Republic; it recorded the name and identification number of each detainee, the court decision that had ordered his detention, the date of his incarceration and the crimes for which he had been convicted. That register could be consulted by representatives of the Red Cross.

31. Mr. LAKHDARI (Algeria) explained that police custody lasting 12 days applied only to people suspected of terrorist offences. For common law offences, police custody could last only 48 hours. The longer period was required owing to the particular nature of the revelations that might be made in police custody by people suspected of terrorist acts, which went beyond the framework of a simple judicial investigation: the requirements posed by the investigation augmented those posed by security. A medical examination was performed systematically at the end

of police custody. The persons concerned were brought before a judge at the end of the 12-day period stipulated in the law. The reforms of the Criminal Procedure Code since 2001 had strengthened the inspection regime for police custody facilities and sought to monitor the conditions of detention and respect for the rights of detainees. There had been 1,021 visits in 2005, 5,284 in 2006 and 1,717 in 2007.

32. The CHAIRPERSON thanked members of the Algerian delegation for their extremely useful oral responses and invited members of the Committee to raise additional questions.

33. Mr. AMOR welcomed the State party's efforts, both in preparing the periodic report and in its direct dialogue with the Committee. He also wished to pay tribute to Algeria for its considerable efforts to protect and promote human rights, which had been scorned during the years of trial that the country had just passed through. The human rights situation in Algeria was not entirely satisfactory but was at least not deadlocked. The promotion of human rights was closely linked to the teaching of tolerance and respect for others, not only in schools but also in the family and religious institutions. It would be interesting to know whether the National Advisory Commission for the Promotion and Protection of Human Rights had prepared specific recommendations with regard to education and whether it had a specific action plan in that connection.

34. The figures given in the report and the written replies showed that the representation of women in political life and in decision-making posts remained limited, especially if one took into consideration the high number of women qualified for such posts. The delegation had said that 7.75 per cent of the representatives in Parliament were women. The Committee would need more detailed statistics to really assess the situation. The general impression remained, however, that the status of women in official posts still needed improvement.

35. The delegation had noted that Algerian courts themselves had found that article 407 of the Civil Procedure Code was inconsistent with article 11 of the Covenant and that the courts had allowed article 11 to govern in many decisions. In that context, the question arose as to why article 407 of the Civil Procedure Code was not simply repealed. The Committee wished to be sure that the provisions of the Covenant, where they were applicable, would prevail over domestic legislation in every case; specific examples of court decisions demonstrating that point would be useful. It would also be interesting to know whether the primacy of provisions of the Covenant could be decided directly by a judge at the initial trial or if that judge had to refer the case to a higher court.

36. It was stated in the report and in the written replies that the National Advisory Commission for the Promotion and Protection of Human Rights submitted an annual report to the President of the Republic. In the interest of transparency, that report should be made public, which had not been done up to the present.

37. The revision of the Family Code in 2005 had marked undeniable progress towards greater equality between the rights of men and women but it had not managed to bring all of the Code's provisions into line with the commitments undertaken by Algeria under the Covenant. For example, the requirement imposed on women that they be accompanied by a *wali* at their wedding constituted discrimination. It was stated in the written replies that the presence of the *wali* was only a simple formality. He asked whether that meant that the wedding could proceed in the absence of a *wali* and still be legally valid. If so, that provision in the Family Code could also just as well be removed.

38. The ban on marriages between Muslim women and non-Muslim men constituted a violation of article 3 of the Covenant, as stated in the Committee's General Comment No. 28 on that article (HRI/GEN/1/Rev.8, para. 24). Marriages between Muslim women and non-Muslim men were increasingly frequent in all Maghreb countries. That reality should be reflected in the State party's legislation. What must especially be avoided was to have the fact that a Muslim woman married a non-Muslim man cause the woman to lose some of her rights.

39. In divorce cases, it would be useful to know what guarantees the Family Code provided for women with regard to housing. On the subject of polygamy, the State party had noted in its written replies that the practice was authorized under the sharia and the Government did not anticipate eliminating it but rather regulating it in such a draconian manner as to render it almost impossible. In that connection, he said that that view was based on a widespread but indefensible interpretation. Under the provisions of article 3 of the Covenant and bearing in mind the Committee's General Comment No. 28, in particular its paragraph 24, which stated that polygamy violated the dignity of women, the practice should be completely eliminated by law.

40. Ms. WEDGWOOD expressed her concern over the fact that article 46 of the ordinance that implemented the Charter for Peace and National Reconciliation provided severe punishment against anyone who made a statement relating to the events of the national tragedy that might seem to criticize the institutions of the Republic, namely, three to five years in prison and a fine of 250,000 to 500,000 dinars, which could easily deter victims from taking advantage of remedies that were available to them, including those provided under international law. Article 46 should therefore be amended to establish clearly that it did not prejudice the right of individuals to submit communications to the Committee under the Optional Protocol to the Covenant.

41. The delegation had indicated that the decision to make public the report of the Ad Hoc National Commission on Disappeared Person rested with the President of the Republic. More than two years had passed since the report had been completed; the respect owed to the families of disappeared persons required that the report be published without further delay. Arrangements should also be made to return the bodies of disappeared persons to their families. It would be useful to know what sort of mechanism could be set up for that purpose.

42. During the 1990s, the police and the military police had on several occasions opened fire indiscriminately on civilians, which had caused several hundred deaths. She asked whether investigations had been carried out to shed light on the facts and whether the Government had undertaken to change the rules of engagement and the rules governing the use of lethal force by law enforcement forces in order to avert further incidents of that kind. She would also like to know whether the officials involved in incidents of that kind had been relieved of their functions or at least been given additional training on the use of force.

43. She took note of the fact that a register was kept in each place of detention but insisted that, if the place of detention was unknown, such a register was of no use to the detainee's family, who remained in the dark. The establishment of a national register that would include all places of detention in the territory and complete information on the people held in those facilities might offer a solution. She asked whether the Government might agree to consider such a solution. Furthermore, cases of torture and ill treatment in places of detention continued to be reported. The absence of rules establishing the non-admissibility of confessions obtained through torture

served as an indirect incitement to continue those practices. The Government should take steps. If it had already done so, it would be useful to know what they were.

44. Mr. KÄLIN welcomed the delegation's claim that articles 45 and 46 of the ordinance that implemented the Charter for Peace and National Reconciliation did not limit the rights of individuals to submit to the Committee, but there was the danger that those articles had a deterrent effect on victims wishing to exercise that right. He noted with regret that, whereas the State party forwarded its comments to the Committee, which were needed for the Committee to begin considering complaints submitted by individuals, it had not responded with regard to the measures it had taken to follow up on the Committee's findings. It was true that the Committee's findings were not judicial decisions and were therefore not enforceable. Nevertheless they had greater authority than simple recommendations, inasmuch as the Committee had formulated those findings in the execution of the mandate granted to it under the Optional Protocol to the Covenant and they dealt with legal issues. Furthermore, the State party was bound by the obligation to implement in good faith the international instruments it had ratified, including the Optional Protocol. The State party should, therefore, work to implement the Committee's findings and inform it of measures adopted to that end or, if appropriate, inform the Committee why it could not legitimately do so.

45. It was stated in the written replies, with regard to the Committee's views, that the executive could not interfere with or modify final court judgements and that the Committee's views were communicated to the judicial authority for purposes of information. It was clear that the courts were sovereign and they alone could decide whether to reopen a case that had already been decided. However, the Committee's findings had other goals than to reopen closed cases, for example compensation for a victim, the opening of a criminal investigation or the adoption of legislative measures aimed at ensuring that the violation did not recur. The State party might wish to commit itself to systematically following up on the views of the Committee and to informing the Committee of measures taken to that end.

46. Ms. MOTOC wished to return to the problem of violence against women. She wished to know whether cases involving that type of violence had been brought to trial and had led to prosecutions. She also wished to know whether measures were taken to assist women to break the code of silence. She noted that the Criminal Code contained provisions under which rape was not considered a crime if the perpetrator then married the victim; such provisions were, however, inconsistent with Algeria's obligations under the Covenant.

47. It would also be useful to know which rights and freedoms were suspended in a state of emergency and which offences exactly were classified as "terrorist acts". Similarly, more detail would be welcome regarding the prevention of terrorism and the manner in which the State party resolved the difficult dialectical relationship between the fight against terrorism and the protection of human rights.

48. *Ms. Palm (Vice-Chairperson) took the Chair.*

49. Sir Nigel RODLEY welcomed the fact that a moratorium on executions had been in effect since 1993 and that the number of crimes punishable by death had been reduced. However, the death penalty could still be imposed for the most serious types of violent crimes and for certain attacks against State security. It would be useful to know more exactly which were the offences in question. There were about 100 persons who had received the death sentence whose sentences had not been commuted, which led one to wonder what sort of treatment they were

receiving, in particular the conditions of their detention. Furthermore, about a dozen of them had been convicted by association with criminals guilty of aggravated robbery or money counterfeiting, crimes that were no longer punishable by the death penalty. He asked whether those persons remained under a death sentence because of their association with criminals. Seventy-four others had been convicted of “terrorist acts”, a category that should be made more explicit.

50. The length of time that police custody could last – as much as 12 days and sometimes longer – was incompatible with articles 9 and 7 of the Covenant, in that such detention could become not only arbitrary but also cruel, inhuman and degrading treatment. The delegation had referred to certain guarantees, such as visitation rights granted to representatives of the Red Cross, but that was insufficient, especially since the Red Cross communicated their comments only to the State concerned. It was true that prosecutors could also visit suspects in custody but they did not always do that and they were also not immune to conflicts of interest. Suspects held in police custody also had access to counsel but only after they had been brought before the Prosecutor of the Republic; it was not stated when exactly that presentation took place. Furthermore, if the family was not informed of the place of detention, it was hard to see how the family could send a lawyer to assist the detainee. One of the best guarantees was to have the authority in charge of detention be different from the authority that conducted the investigation. It was true that in complex cases, such as crimes linked to terrorism, it could be difficult to indict a suspect in a relatively short period of time; but the State party could nevertheless protect detainees through external mechanisms rather than detention.

51. The amnesty measures in Ordinance No. 06-01, which implemented the Charter for Peace and National Reconciliation, did not apply to persons convicted of massacres, rape or bomb attacks in public places. At the same time, however, article 45 of the Ordinance granted immunity from prosecution to members of the security forces. But, those forces had been responsible for hundreds of kidnappings followed by murder. They were not isolated acts but definitely a systematic practice. On the other hand, those who opposed impunity had every reason to feel threatened by article 46, which was drafted in such broad language that it left hardly any margin for determining responsibilities. Pending possible amendments to those provisions, the State party should at least state publicly that they presented no barrier to the defence of human rights, which would hurt the image of Algeria more than to denounce the violations.

52. In general, the link between Ordinance No. 06-01, especially its article 45, and the language of the Charter for Peace and National Reconciliation was not obvious. Even if the Charter reflected the will of the people, the Committee was still required to consider the legal consequences of any violation of rights recognized by the Covenant and the State party could not avoid its obligation to bring those responsible for such violations to justice.

53. Ms. CHANET, following up on the comments by Sir Nigel Rodley on the discharge of liabilities and impunity, stressed that the Covenant prevailed over domestic law, even if it had been accepted by a popular referendum. The State party was insistent that the Charter for Peace and National Reconciliation had been approved by the Algerian people, but the question arose as to whether the people had had the opportunity to read the text and in all official languages. She also wondered how the referendum question had been phrased. Apparently, the people had been asked to say whether they were in favour of peace, to which one could hardly reply in the negative. On the other hand, the people did not seem to have

been consulted about Ordinance No. 06 01 and were therefore probably not aware of the impunity that the text could lead to.

54. The State party had given assurances that it sought to compensate all victims of the national tragedy, but again, one might wonder if that could really be the case, especially since compensation was predicated on the submission of a death certificate, which was impossible in cases of disappearance. She would welcome more details on that subject.

55. The definition of terrorism was far too broad and could apply to some violent behaviours such as trade union demonstrations that got out of hand. It was of even greater concern that classifying an offence as a “terrorist act” had very serious consequences, such as the doubling of punishments, the lowering of the age of majority to 16 years and police custody lasting up to 12 days. With regard to the state of emergency, it would be interesting to know how authority was divided between civilian and military authorities, and whether military authority was limited to police powers or whether it included the operation of military courts. With regard to secret detention, it should be remembered that not long ago the special rapporteurs – although the State party claimed they no longer intervened in Algeria – had sent urgent appeals to the Government regarding Abderrahmane Mehalli, who had been tortured, whereas the authorities had even denied that he was in detention; and two Algerians who had been expelled by the United Kingdom had disappeared into the hands of the Department of Information and Security.

56. Ms. WEDGWOOD asked how the civilian authorities could be sure that no one was currently in detention without his detention having been revealed, given that not long ago there had been innumerable secret detention centres. The only way to be sure was to review the list of all persons who had disappeared and determine what had happened in each case.

57. Mr. IWASAWA shared the concerns expressed by Mr. Kälin with regard to the impact that Ordinance No. 06-01 could have on the right of individuals to submit communications under the Optional Protocol. The State party claimed that the Ordinance had no effect on that right, as it could be applied only in the national territory, but one might well suspect that it had a deterrent effect.

58. Ms. MAJODINA requested more details on the National Advisory Commission for the Promotion and Protection of Human Rights, in particular the procedure and criteria for the appointment of its members and the length of their term of office. The independence of that Commission would seem to be compromised by the fact that its members were representatives of Government institutions and civil society. A national human rights institution should never have to be accountable to the executive branch.

The meeting rose at 1.05 p.m.