



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1994

Addendum

ALGERIA*

[23 February 1996]

* The initial report submitted by the Government of Algeria is contained in document CAT/C/9/Add.5; for its consideration by the Committee, see documents CAT/C/SR.79 and 80 and the Official Records of the General Assembly, Forty-sixth session, Supplement No. 44 (A/46/46), paras. 263-290.

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Introduction

1. Algeria ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Presidential Decree No. 89-66 of 16 May 1989, following approval by the National People's Assembly (Act No. 89-10 of 25 April 1989).

2. Algeria did not make any reservations at the time of approving and ratifying the Convention. It also recognized the powers vested in the Committee against Torture by articles 17 et seq. of the Convention.

3. At the sixth session of the Committee, Algeria submitted its initial report under article 19 of the Convention.

4. Under that same article, Algeria is also submitting its present periodic report, in two parts. Part I contains general information on all new measures taken by Algeria to implement the Convention and on any changes in legislation which affect implementation, from the date of submission of the initial report to the present. Part II contains supplementary information pursuant to the observations made by the Committee at the time of its consideration of the initial report of Algeria.

I. NEW MEASURES AND NEW DEVELOPMENTS RELEVANT TO THE CONVENTION

A. Measures taken to implement the Convention

5. Under section 2 of the Criminal Code, entitled "infringements of liberty", article 11 bis defines and punishes acts of torture. It stipulates that "any official or agent who carries out torture or orders it to be carried out in order to obtain a confession shall be punished by a prison term of six months to three years". This provision satisfies the provisions of articles 1, 2 and 4 of the Convention, as it punishes all State agents, whether security service officers or others, who intentionally inflict physical or mental suffering on a person in order to obtain a confession. The provision imposes the same penalty on any State official or agent who, while not himself committing the material act involving the infliction of torture, has ordered a third person to do so.

6. At the same time, article 12 of Executive Decree No. 92-276 of 6 July 1992, the Code of Medical Ethics, stipulates that "a doctor or dental surgeon who is asked or required to examine a detainee may not, whether directly or indirectly, even if only by being present, encourage or support an attack on the detainee's physical or mental integrity or dignity. If he finds that the detainee has been maltreated or brutalized he must so inform the judicial authority. A doctor or dental surgeon must never assist, participate in or allow acts of torture or any other form of cruel, inhuman or degrading treatment".

7. Furthermore, under article 32 of the Code of Criminal Procedure, "any established authority, public official or civil servant who, in the exercise of his functions, learns of a crime or offence, is required to inform the Department of Public Prosecution thereof without delay and to transmit to the Department any information, reports or documents relating thereto".

8. Article 72 of the Code stipulates that "any person who claims to have been injured by an offence may, by filing a complaint, bring a criminal indemnity action before the competent judge".

9. In conformity with article 4 of the Convention, Algeria is ensuring that "all acts of torture are offences under its criminal law".

B. Changes in Algerian legislation since the submission of the initial report, and new developments likely to affect the implementation of the Convention

10. For several years, Algeria has been undergoing profound changes, resulting in the promulgation of the Constitution of 23 February 1989. This text set up a general mechanism enshrining the principles for creating a truly constitutional, democratic and pluralistic State striving to consolidate individual and collective freedoms and safeguard human rights.

11. Based on the principles set forth in the Constitution, the judiciary, which is an independent branch, has endeavoured to ensure its practical independence at both the national and international levels.

12. At the international level, national legislation has been brought into line with international legal instruments on human rights.

13. At the national level, earlier legislation has been revised and outdated texts removed. The criminal penalty of transportation for life; the economic section of the Criminal Court; and preferential procedures for certain people awaiting trial have all been abolished. The Code of Criminal Procedure has been amended to consolidate the basic rights of the individual:

Police custody limited to 48 hours;

Communication allowed between the detainee and his family;

Searches subject to the consent of the head of household and a warrant from the magistrate;

Limited period of preventive detention;

Judicial supervision set up in place of preventive detention.

14. At the same time, a law on the status of the magistrature, which enshrines the principle of the independence of the judiciary, has been promulgated. In addition, a new organizational law on the legal profession has strengthened the profession's independent nature, and its role of working to ensure respect for citizens' freedoms and rights and strengthening and safeguarding the rights of defence. The functions of the notary and bailiff have also been grouped together as professions.

15. However, all of these legal provisions have been hindered by a new phenomenon, characterized by violent expressions of religious extremism and terrorism.

C. Proclamation of the state of emergency

16. The emergence and proliferation of grave breaches of public order and security of person and property led the Government, on 9 February 1992, to proclaim a state of emergency for a period of 12 months (Presidential Decree No. 92/44).

17. In conformity with the procedures laid down in the International Covenant on Civil and Political Rights, to which Algeria acceded in 1989, Algeria, through the Secretary-General, informed the other States parties that it was availing itself of the right of derogation from some of the Covenant's provisions.

18. Because of the persistent troubles due to terrorist activity, the state of emergency was extended on 6 February 1993 (Legislative Decree No. 93/02). Its purpose is to restore public order and better ensure security of person and property as well as the proper functioning of public services.

19. Under the presidential decree on the state of emergency, "the Minister of the Interior, in respect of all or part of the national territory, as well as the wali, in respect of his district, are empowered to issue decrees to maintain or restore public order, in keeping with government directives". The proclamation of the state of emergency gives the Minister of the Interior, for the entire national territory, or the wali, for his district, the following powers, in keeping with government directives:

To restrict or forbid the movement of persons and vehicles at specific times and places;

To control the movement and distribution of foodstuffs and essential goods;

To set up regulated residential zones for non-residents;

To deny residence to all adults whose actions prove harmful to public order and to the functioning of public services, or to place them under house arrest;

To requisition workers to carry out routine professional tasks, in cases of unauthorized or illegal strikes;

On an exceptional basis, to order searches, both during the day and at night.

20. The Minister of the Interior and the territorially competent wali are also empowered to order the temporary closure of all types of theatres and meeting halls and to forbid any gatherings that might disturb public order and peace.

21. By article 5 of the same decree, "the Minister of the Interior may order any adult whose actions prove dangerous for public order, public safety or the proper functioning of public services to be committed to a custody centre in a specified place". This measure, which the Government was obliged to apply, particularly during the months immediately following the proclamation of the state of emergency, was prompted by a concern to curb acts of violence which

jeopardize public order, individual security and social peace, threatening national stability in the process. The committal order is issued by the Minister of the Interior or an authority appointed by him.

22. Executive Decree No. 92/75 of 20 February 1992, which lays down the conditions for applying some of the provisions of the presidential decree on the state of emergency, defines committal to a custody centre as "an administrative measure of a preventive nature which consists of depriving all adults whose behaviour might endanger public order and safety, as well as the proper functioning of public services, of their freedom of movement by committing them to one of the centres created by decree of the Minister of the Interior".

23. The same decree stipulates that the committal order may be the subject of an appeal to the wali of the detainee's place of residence. Any appeals, investigated and accompanied by any relevant observations, are submitted to the "Regional Appeals Council", which issues its decisions 15 days following the referral. The decree establishes six such councils, spread throughout the national territory.

24. The detainees receive assistance and medical care under conditions determined by the internal regulations applicable to the custody centre. Of the approximately 10,000 persons taken in for questioning between February and April 1992, a large number were released a few days after consideration of their cases. The others were committed to custody centres in conformity with the above-mentioned decrees. Starting in May 1992, the detainees were gradually released and the custody centres closed.

25. It should be pointed out that the exceptional measures taken during the state of emergency were all accompanied by guarantees of protection of human rights. No restrictions were placed on the rights and freedoms enshrined in articles 6, 7, 8, 11, 15, 16 and 18 of the International Covenant on Civil and Political Rights.

26. The measures for maintaining or restoring order which the Minister of the Interior or the wali is empowered to take must be implemented "in keeping with government directives", particularly with regard to the observance of human rights and fundamental freedoms.

1. Law on terrorism and subversion

27. In order to be equipped with legal instruments enabling it to confront terrorist crime through the judiciary, Algeria enacted a law on terrorism. Legislative Decree No. 92-03 of 30 September 1992, on action to combat terrorism and subversion, creates specialized bodies, called "special courts", to try cases of terrorism.

28. These special courts are not courts of special jurisdiction and are special only with regard to the nature of the offences which they are responsible for trying. This assertion is supported by the fact that:

The special courts are composed exclusively of professional magistrates of the ordinary-law judiciary, who by regulation are subject to the law on the status of the magistrature;

The rules of the Code of Criminal Procedure apply to the types of cases that can be tried by the special courts, except for some minor adjustments which have no effect whatsoever on the rights of the defence;

Hearings are public and are open to the national and international press;

The rights of the defence are scrupulously observed, and detainees who for financial reasons cannot avail themselves of the services of a lawyer may have one appointed for them by the President of the Bar;

The remedies allowed in ordinary cases are available to the accused in special courts at all stages of the proceedings, with no restrictions whatsoever (appeal against the decisions of examining magistrates, objection and application for judicial review in respect of judgements).

29. Lastly, in conformity with the Constitution and the law, anyone sentenced to death may receive a presidential pardon. It should be noted that several persons sentenced to death by the special courts have in fact been pardoned, and in any event no death sentence has been carried out since September 1993.

2. Abrogation of the provisions on terrorism and subversion and elimination of the special courts

30. In an attempt to standardize its judicial system, Algeria abrogated Legislative Decree No. 92-03, thereby eliminating the special courts. The phenomenon of subversion and terrorism has been restored to its normal context of pure and simple delinquency and is dealt with at the judicial level by the ordinary courts.

31. Ordinance No. 95-11 of 25 February 1995, which amends and supplements Ordinance No. 66-156 of 8 June 1996, on the Criminal Code, created a new category of criminal acts, "terrorist and subversive crimes", the judicial procedure for which is handled by the criminal courts. Any act directed against State security, territorial integrity or the stability and normal functioning of institutions is defined as a "terrorist and subversive act" (art. 87 bis of the amended Code) if it has one of the following aims:

To sow terror among the population and create a climate of insecurity by morally or physically attacking persons, endangering their life, freedom or safety or damaging their property;

To hinder traffic or freedom of movement on the roads and fill public places with crowds;

To commit an outrage against the symbols of the nation and the Republic and desecrate tombs;

To attack means of communications and transportation, as well as public and private property, through illegal seizure or occupation;

To harm the environment or introduce into the atmosphere, earth, subsoil or waters, including the territorial sea, any substance which might endanger the health of mankind or animals or the natural environment;

To hinder the action of the public authorities or the free functioning of establishments providing a public service;

To hinder the functioning of public institutions or attack the life or property of their agents, or impede the implementation of laws and regulations.

D. Ordinance No. 95-12 of 25 February 1995 on clemency measures

32. In an attempt to encourage the restoration of civil peace, the Algerian State has decided on clemency measures aimed at creating an opportunity for persons who have strayed into criminal activities and wish to become law-abiding once again. A clemency law was adopted, aimed at repentant terrorists, calling for a series of measures ranging from exemption from prosecution to the substantial reduction of sentences and punishments.

33. The clemency measures call, among other things, for the following:

Any person who has belonged to one of the organizations covered by article 87 bis (3) of the Criminal Code and who has not committed one of the offences covered by that article, leading to loss of human life, permanent disability, breach of the moral or physical integrity of citizens or destruction of public property, shall not be prosecuted (art. 2);

Any person who has been in possession of arms, explosives or other weapons and who voluntarily turns them over to the authorities shall not be prosecuted (art. 3);

If the persons covered by article 1 have committed crimes entailing loss of human life or permanent disability, the sentence shall be 15 to 20 years' imprisonment, when the legal penalty is the death sentence, and 10 to 15 years' imprisonment, when the penalty is life imprisonment. In all cases, the sentence shall be reduced by half;

The persons covered by articles 4, 8, 9, 10 and 11 of the Ordinance shall be taken immediately to the competent court and brought before the Government Procurator (art. 7). The latter must immediately prepare a report establishing the facts and initiate public proceedings. The persons concerned may, if they so request, undergo a medical examination.

E. Creation of the National Human Rights Observatory

34. With the adoption of the 1989 Constitution and Algeria's accession to the international legal instruments on human rights, the post of Minister for Human Rights was created in June 1991. However, given the difficulty in reconciling the defence of human rights with government responsibility, Algeria, like other countries, decided to set up a National Human Rights Observatory (established by Presidential Decree No. 92-77, which was signed on 22 February 1992).

35. An independent institution attached to the Office of the President of the Republic, with administrative and financial autonomy, the Observatory is

a human rights monitoring and evaluation body. It plays an advisory role in fields relating to human rights, and its principal activities are the following:

Promotion of human rights in Algeria, in conformity with the principles embodied in the Universal Declaration of Human Rights;

Monitoring and assessment of the implementation of the human rights provisions of the international conventions ratified by Algeria and the provisions of the Constitution, laws and regulations;

Adoption of measures when human rights violations are reported or brought to its attention;

Preparation of an annual report on the situation of human rights.

36. The Observatory is involved in raising awareness and popularizing the human rights principles contained in national legislation and the international legal instruments on human rights, publishing a quarterly human rights review, a press review and an internal information bulletin on its activities.

37. In order to be closer to the people and to streamline its work of protecting and promoting human rights, the Observatory is attempting to strengthen its activities in the field by opening decentralized offices nationwide.

38. As an example of Algeria's commitment to promoting human rights, the President recently instructed the various State bodies to give their full assistance to the Observatory in its mission of monitoring respect for human rights.

II. SUPPLEMENTARY INFORMATION PURSUANT TO THE OBSERVATIONS MADE BY THE COMMITTEE AT THE TIME OF SUBMISSION OF THE INITIAL REPORT

Manslaughter

39. Manslaughter may never be liable to the death sentence or indeed a criminal penalty. Under article 288 of the Criminal Code, "Anyone who, whether through maladroitness, imprudence, inattentiveness or failure to observe regulations, involuntarily commits or is the cause of a homicide shall be punished by a prison term of six months to three years and a fine of 1,000 dinars". The perpetrator of manslaughter may therefore be tried by the criminal courts and be liable to a correctional penalty.

Judicial error

40. Judicial error is covered by Algerian legislation within the framework of an application for a trial review. Article 531 provides that applications for review may be lodged only against judgements and decisions having the force of res judicata, by jurisdictions that have pronounced criminal or correctional penalties. It states that, in matters of review, it is the Supreme Court which is competent.

41. Article 531 bis holds that any Supreme Court decision by which a convicted person is found innocent grants that person or his rightful claimants damages by way of compensation for the moral and material injury caused to him by the conviction. The application for redress formulated by the convicted person or his rightful claimants may be submitted at any stage of the proceedings. Article 531 bis goes on to state that damages awarded to the victim of the judicial error or his rightful claimants, the cost of filing and publishing the judicial decision, and the court costs are to be paid by the State.

42. If the person applying for review so requires, the decision by which the convicted person is declared innocent is posted in the jurisdiction of the court which handed down the conviction, in that of the domicile of the person applying for review, and in that of the last domicile of the victim of the judicial error, if that person is deceased. Under the same conditions, this decision is published through the press, in three newspapers to be chosen by the court which pronounced the review decision.

Cruel, inhuman or degrading treatment

43. Capital punishment is not considered in Algeria to be cruel and inhuman treatment. It should, however, be stressed that its application respects the safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the Economic and Social Council in its resolution 1984/50. Thus:

The death penalty, like all other criminal penalties, may not be pronounced by Algerian courts except for the most serious intentional crimes with lethal or other extremely grave consequences;

Like all other criminal penalties, the death penalty may be imposed only for a crime for which the death penalty was prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

The principle of non-retroactivity is enshrined both in the Constitution and in article 2 of the Criminal Code, which states that "criminal law shall not have retroactive effect, save where it prescribes a lighter penalty";

The death penalty may not be pronounced against persons below 18 years of age (who are exempted by their minority status under art. 50 of the Criminal Code);

The death penalty may not be carried out on pregnant women or on women breast-feeding a child of under 24 months, nor against a convicted person who is seriously ill or who has become insane (art. 197, para. 2, of the Prison Reform and Rehabilitation Code);

The death penalty may only be carried out pursuant to a final judgement having the force of res judicata, after remedies with the Appeals Court and the Head of State have been exhausted. Article 499 of the Code of

Criminal Procedure provides that, pending the expiry of the deadline for application for judicial review and, if an appeal is lodged, until the Supreme Court decision is pronounced, there shall be a stay of execution against the decision, except with regard to civil sentences;

Anyone sentenced to death, regardless of his crime, has the right to apply for pardon, or commutation of sentence;

Where capital punishment is applied, it shall be carried out so as to inflict the minimum physical suffering.

Extradition

44. Independently of Algeria's accession to the legal conventions governing extradition and its implementation, the law, including Title I of the Code of Criminal Procedure, on extradition, defines its legal framework, conditions (art. 697) and cases where it is denied. Article 698 of the Code enumerates some cases where extradition is not granted:

When the subject of the extradition request is of Algerian nationality, and this status already existed at the time of the offence for which the extradition is requested;

When the crimes or offences have been committed on Algerian territory;

When the crimes or offences, even if committed outside Algerian territory, have been prosecuted and a final decision rendered;

When, according to the laws of the requesting State or of the State of which the request is made, the prescription of the action was completed prior to the extradition request, or the prescription of the penalty was completed prior to the arrest of the individual whose extradition is requested and, generally, once the public proceedings of the requesting State have concluded;

If there has been an amnesty in either the requesting State, or the State of which the request is made, as long as, in the latter case, the offence is one which can be prosecuted in that State when committed outside its territory by an alien.

45. It should be noted that, as soon as the extradition request reaches the Algerian Government and the documents in the case file have been examined, the subject of the extradition request is immediately arrested and held in the Algiers penitentiary (art. 702 of the Code of Criminal Procedure). The Criminal Division of the Supreme Court is immediately seized with reports and all other documents. The alien appears before the Court within not more than eight days after the papers have been served. If the Supreme Court hands down an opinion to deny the request for extradition, that decision is final and extradition may not be granted (art. 710 of the Code of Criminal Procedure).

46. An individual who has been provisionally arrested under the conditions stipulated by article 705 may be released if, within 45 days of his arrest, the Algerian Government has not received one of the documents mentioned in article 702 (art. 713 of the Code of Criminal Procedure).

Status of the magistrature

47. Ordinance No. 27-69 b of 31 May 1969 on the status of the magistrature considered the magistrature to be "a specialized function of the revolutionary power", its main role being to protect and defend the revolution, which called for a political commitment by the magistrature and the magistrates. The High Council of the Judiciary was composed of magistrates elected by their peers but also of representatives from the political world and the legislature (National People's Assembly).

48. The Constitution of 23 February 1989 recognized the principle of the independence of the judiciary based on the strict separation of powers. On that basis, a new law on the status of the magistrature was promulgated on 12 December 1989 and complemented by a legislative decree of 24 October 1992. These texts define a new mandate for magistrates, ensure their impartiality and protect them against all forms of pressure. They recognize the irremovability of magistrates and separate the function from the rank so that the magistrates' career can develop without their posts being endangered.

49. The members of the High Council of the Judiciary representing the political and legislative authorities have been removed and the Council has become the only body to deal with the magistrate's career. It is now composed of eight magistrates (the Senior President of the Supreme Court, the Chief Prosecutor of the Supreme Court and six magistrates elected by their peers), four members appointed by the Head of State, and three members representing the Ministry of Justice. It is chaired by the Head of State, and the Minister of Justice is Vice-President.

The prison population in Algeria

50. From independence in 1962 to the present, the prison population has never exceeded 28,000, including all categories and nationalities. The capacity of the 115 penitentiary establishments is about 25,000, a figure which has been arrived at in accordance with criteria and procedures in effect at the international level.

51. The penitentiary system in Algeria permits the use of prison labour on outside work sites. Some 2,000 detainees have been assigned to agricultural farms as part of the prison workforce employment programme called for by the Prison Reform and Rehabilitation Code, which is based on the set of minimum rules adopted by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders, as well as subsequent United Nations guidelines, standards and recommendations.

The Constitutional Council

52. The Constitutional Council (arts. 153-159 of the Constitution) consists of seven members, two of whom are appointed by the President of the Republic, two elected by the National People's Assembly and two elected from within the Supreme Court.

53. The President of the Republic designates the President of the Constitutional Council for a single six-year term.

Primacy of international conventions over domestic law

54. Under the Constitution, international conventions ratified by Algeria have a higher legal status than domestic law. This naturally means that all provisions of international conventions are taken into account by national legislation in force.

55. By its Decision No. 1 of 20 August 1989, the Constitutional Council considered in that regard that "after it is ratified and once it is published, any international convention becomes a part of national law and, pursuant to article 123 of the Constitution, acquires higher authority than that of the laws, authorizing any Algerian citizen to invoke it before the courts".

Proclamation of a state of emergency

56. Article 86 of the Constitution states that, in case of compelling necessity, the President of the Republic, after consulting the Head of Government and the President of the Constitutional Council, may declare a state of emergency.

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