



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

Algeria

1. The Human Rights Committee considered the third periodic report of Algeria (CCPR/C/DZA/3) at its 2494th, 2495th and 2496th meetings (CCPR/C/SR.2494, 2495 and 2496), held on 23 and 24 October 2007 and adopted the following concluding observations at its 2509th meeting (CCPR/C/SR.2509), held on 1 November 2007.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of Algeria and the opportunity thus offered to resume the dialogue with the State party. It also welcomes the presence of a high-level delegation during the consideration of the report. It further expresses its gratitude to the Government for the additional documents with which it was provided prior to and during the consideration of the report. While the Committee is conscious of the suffering caused by the rampant violence of the 1990s, including against civilians, compounded by political exploitation of religion and religious extremism that compromises human rights and constitutes a denial of tolerance - a challenge for both society and the State - the Committee considers that this must not be used to justify in time of emergency, breaches of article 4 of the Covenant.

B. Positive aspects

3. The Committee welcomes the amendments to the Family Code aimed at effecting some improvement in respect for the rights of women and protection of the family in Algeria.

4. The Committee welcomes the State party's efforts to provide human rights education in educational institutions and train its judges and candidates for judgeships in human rights, ethics and the issues surrounding the treatment of detainees. It also welcomes the fact that human rights education has been incorporated into the training programmes of the national gendarmerie and the law-enforcement agencies.

5. The Committee welcomes the de jure moratorium on the death penalty in effect since 1993, and the fact that the State party considers itself to be a de facto abolitionist State.

C. Principal subjects of concern and recommendations

6. The Committee notes that, according to the State party's report, the Covenant has primacy over national law and may be invoked in the State party's courts. It regrets, however, that the rights protected by the Covenant have not been fully incorporated into domestic legislation, and that the Covenant has not been disseminated widely enough for it to be regularly invoked before the courts and the administrative authorities. It also regrets that, notwithstanding the case law of Algerian courts, which finds recourse to civil imprisonment pursuant to article 407 of the Code of Civil Procedure to be contrary to article 11 of the Covenant, this provision of the Code has still not been repealed (Covenant, art. 2).

The State party should ensure that its legislation gives full effect to the rights established by the Covenant. It should in particular ensure that remedies exist to guarantee the exercise of these rights. It should make the Covenant known to the population as a whole and, above all, to those responsible for law enforcement.

7. Notwithstanding the State party's references to criminal proceedings against persons responsible for human rights violations, the Committee notes with concern that the State party has not furnished precise and specific information on such proceedings. It also notes with concern that, reportedly, many serious violations of human rights have been committed with complete impunity in Algeria, including by public officials, and continue to be committed. It also notes that the State party has provided few examples of serious crimes that have been prosecuted and punished, for example in connection with cases of "disappearance". The Committee is concerned that Ordinance No. 06-01 enacting the Charter for Peace and National Reconciliation, which prohibits any prosecution of members of the defence or security force, seems thus to promote impunity and infringe the right to an effective remedy (Covenant, arts. 2, 6, 7 and 14).

The State party should:

(a) Ensure that article 45 of Ordinance No. 60-01 does not impede enjoyment of the right to an effective remedy in conformity with article 2 of the Covenant and, in particular, that article 45 is amended in order to make it clear that the article does not apply to crimes such as torture, murder and abduction. Furthermore, the State party should take steps to inform the public that article 45 does not apply to statements or prosecutions for torture, extrajudicial execution or disappearances;

(b) Take all appropriate measures to guarantee that serious violations of human rights brought to its attention, such as massacres, torture, rapes and disappearances, are investigated and that the perpetrators of such violations, including State officials and members of armed groups, are prosecuted and held to account for their acts;

(c) Ensure that no pardon, commutation or remission of sentence or termination of public proceedings is granted in respect of any person, whether a State official or member of an armed group, who has committed or commits serious human rights violations such as massacres, torture, rapes and disappearances, that a thorough and exhaustive inquiry is conducted by the competent judicial authorities, into other violations and that the courts are able to examine the crimes of which these persons are allegedly guilty before any decision on a pardon, commutation or remission of sentence or termination of public proceedings is taken;

(d) Provide, in its next report, detailed information on the implementation of Ordinance No. 06-01, indicating not only the number of persons who have benefited from a pardon, commutation or remission of sentence or termination of public proceedings, but also for what offences and in what circumstances Ordinance No. 06-01 was applied in their regard.

8. The Committee takes note of the explicit assurances given by the State party delegation that no provision of Ordinance No. 06-01 enacting the Charter for Peace and National Reconciliation, in particular article 46, infringes the right of private individuals to submit a communication to the Committee under the Optional Protocol to the Covenant and that no proceedings have been brought pursuant to article 46. The Committee notes, however, with concern that article 46 prescribes a penalty of imprisonment and a fine for anyone who attacks the institutions of the State party, impugns the honour of its officials or tarnishes the image of the State party abroad (Covenant, arts. 2 and 19; Optional Protocol, arts. 1 and 2).

The State party should repeal any provision of Ordinance No. 06-01 enacting the Charter for Peace and National Reconciliation, in particular article 46, which infringes freedom of expression and the right of any person to have access, at the national and international levels, to an effective remedy against violations of human rights. The State party should also ensure that the public is informed of the right of private individuals to refer a matter to the Committee, pursuant to the Optional Protocol, and to any other international or regional body, and that this right is not impaired by the provisions of Ordinance No. 06-01.

9. The Committee notes with concern that the State party has provided it with no information on the implementation of the recommendations set out in the Views adopted by the Committee under the Optional Protocol to the Covenant (communications Nos. 1172/2003, *Madani Abbassi v. Algeria*, Views adopted on 28 March 2007 (unfair trial and arbitrary detention); 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006 (arbitrary detention and disappearance); 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006 (disappearance); 992/2001, *Bousroual and Saker v. Algeria*, Views adopted on 30 March 2006 (disappearance); 1085/2002, *Taright et al. v. Algeria*, Views adopted on 15 March 2006 (arbitrary detention)): (Covenant, art. 2; Optional Protocol, arts. 1 and 2).

The State party should take the necessary measures to give effect to the Committee's Views, so as to guarantee the right to an effective remedy as established in article 2, paragraph 3, of the Covenant.

10. While taking note of the work of the National Advisory Commission for the Promotion and Protection of Human Rights, the Committee notes, with concern, the lack of information on the outcome of the Commission's work, due, inter alia, to the non-publication of its annual reports. It also regrets the lack of information on the Commission's national action plan on human rights (art. 2).

The State party should ensure that the annual reports and action plans of the National Advisory Commission for the Promotion and Protection of Human Rights are made public.

11. While noting the assurances given by the State party's delegation on the periodic and unannounced inspections that the authorities and the International Committee of the Red Cross conduct in prisons, the Committee is concerned about the numerous reports from non-governmental sources pointing to the existence of secret detention centres located, allegedly, at Houch Chnou, Oued Namous, Reggane, El Harrach and Ouargla, among others, where persons deprived of their liberty are allegedly being held (Covenant, arts. 2 and 9).

The State party should make sure that all places of detention are under the control of the civil prison authorities and the prosecutor's office, ensure compliance with all the provisions of article 9 of the Covenant and establish a national register of detention centres and persons in detention, which is accessible, in particular, to the families and lawyers of detainees and specifies, inter alia, the authority responsible for detention.

In addition, the State party should take all necessary measures, in its legislation and in practice, to ensure that all custodial establishments, including those of the Intelligence and Security Department, are visited regularly not only by the International Committee of the Red Cross, but also by an independent national organization.

12. While noting the work of the ad hoc National Commission on Disappearances and the establishment of offices to register complaints of disappearance, the Committee notes with concern that the authorities have not, to date, undertaken any public, exhaustive and independent assessment of the serious human rights violations perpetrated in Algeria. It also notes with concern the almost total absence of information on the work and results obtained by the ad hoc National Commission on Disappearances, whose report has still not been made public (Covenant, arts. 2, 6, 7, 9, 10 and 16).

The State party should:

(a) Undertake to ensure that disappeared persons and/or their families have access to an effective remedy and that proper follow-up is assured, while ensuring respect for the right to compensation and the fullest possible redress;

(b) Undertake, in all circumstances, to clarify and resolve each case of disappearance, in particular the circumstances of the case and the identity of the victims. The State party should furthermore ensure that any person held in secret detention is placed under the protection of the law, and that the right of these persons to be brought before a judge in the shortest possible time is duly respected. In the case of deceased persons, the State party should take all necessary measures to clarify the place and cause of death, together with the place of burial, and undertake to return the bodies of deceased persons to their families;

(c) Undertake to convey all information concerning investigations and their outcome to the families of disappeared persons, in particular by publishing the final report of the ad hoc National Commission on Disappearances;

(d) Conduct a comprehensive and independent investigation into all allegations of disappearance, in order to identify, prosecute and punish the culprits.

13. The Committee takes note with concern of the provisions of Ordinance No. 06-01 enacting the Charter for Peace and National Reconciliation which oblige the families of disappeared persons to have the family member declared dead in order to be eligible for compensation (Covenant, arts. 2, 6 and 7).

The State party should:

(a) Abolish the obligation in cases of disappearance which makes the right to compensation dependent on the family's willingness to have the family member declared dead;

(b) Ensure that any compensation or other form of redress adequately reflects the gravity of the violation and of the harm suffered.

14. While noting the State party's assertion that the state of emergency does not entail any restriction on most rights and freedoms, the Committee is nevertheless concerned that the state of emergency proclaimed in Algeria in 1992 has remained in force since then, as evidenced, for instance, by the continued delegation of the functions of the police to the Intelligence and Security Department. The Committee further draws the State party's attention to general comment No. 29 (2001) on article 4 of the Covenant (Derogations during a state of emergency).

The State party should undertake to review the need for maintaining the state of emergency in accordance with the criteria laid down in article 4 of the Covenant and ensure that its application does not lead to violations of the Covenant. In the meantime, the State party should indicate which rights are still subject to derogation and the specific need for such derogation.

15. The Committee takes note with concern of the information regarding cases of torture and cruel, inhuman or degrading treatment in the State party, for which the Intelligence and Security Department reportedly has responsibility (Covenant, arts. 2, 6 and 7).

The State party should:

(a) Guarantee that all allegations of torture and cruel, inhuman or degrading treatment are investigated by an independent authority and that the perpetrators of such acts are duly prosecuted and punished;

(b) Improve training for State officials in this area, so as to ensure that any person who is arrested or detained is informed of his or her rights.

16. The Committee notes with satisfaction the progress that the State party has made towards the abolition of the death penalty by reducing the number of crimes punishable by death and commuting the sentences of some prisoners. It regrets, however, that it has not received the full list of capital offences and that some persons sentenced to death have not yet formally benefited from commutation of their sentence, even though they are now entitled to such a measure (Covenant, arts. 2 and 6).

The State party should take all necessary measures to commute as soon as possible the death sentences imposed for crimes which are no longer punishable by death by virtue of the moratorium in effect since 1993. The State party should carry out its intention of abolishing the death penalty and ratify the second Optional Protocol.

17. While it understands the security requirements associated with the fight against terrorism, the Committee expresses concern at the lack of details on the particularly broad definition of terrorist and subversive acts given in the Criminal Code, especially in view of the consequences of acts subject to the death penalty (Covenant, arts. 6, 7 and 14).

The State party should ensure that counter-terrorism measures are consistent with the Covenant. In addition, the definition of terrorist and subversive acts should not lead to constructions whereby the terrorist acts can be invoked to deny the legitimate expression of rights established in the Covenant.

18. While noting the amendments made to the Code of Criminal Procedure, the Committee expresses its concern over the length of police custody (up to 12 days), which, in practice, can also be extended further. The Committee further notes with concern that the law does not guarantee the right to remain silent or the right to see a lawyer during the period in police custody and that the right of a person in custody to have access to a doctor, to communicate with his or her family and to be brought before a court within a reasonable time, is not always respected (Covenant, arts. 7 and 9).

The State party should ensure that a limit on the legal duration of police custody is set in the Code of Criminal Procedure, in accordance with article 9 of the Covenant, and should then guarantee that the legal limit is respected in practice. The right of persons in custody to be informed of the reasons for their arrest, to remain silent and to have access to a lawyer upon arrest, and to a doctor and their family, should be spelt out in the Code of Criminal Procedure and applied in practice. The State party is invited to supply precise information, in its next report, on the measures adopted to ensure that the rights of persons in custody are respected in practice and on the methods for monitoring custody conditions.

19. The Committee is concerned that confessions obtained under torture are not explicitly prohibited and excluded as evidence under the State party's legislation (Covenant, arts. 7 and 14).

In addition to the absolute prohibition of torture established in the Algerian Criminal Code, the State party should formally prohibit the use, in all courts in Algeria of confessions obtained under torture. The State party should also indicate, in its next report, the number of complaints lodged which call for review of a sentence imposed following an unfair trial, including as a result of confessions obtained under torture.

20. While noting the State party's desire to amend its laws and engage in reflection on the status of women in Algeria, the Committee notes with concern the persistence of discrimination against women in both practice and law, particularly in relation to marriage, divorce and adequate participation in public life (Covenant, arts. 3, 23, 25 and 26).

The State party should:

(a) Expedite efforts to bring the laws on the family and personal status into line with articles 3, 23 and 26 of the Covenant, particularly with regard to the institution of the *wali*, (guardian) the rules on marriage and divorce - especially the non-attribution of housing to divorced women without children - and decisions concerning custody of children. In addition, the State party should abolish polygamy, a practice which is an affront to women's dignity and is incompatible with the Covenant;

(b) Step up its efforts to increase awareness of women's rights among the Algerian population, to promote women's participation in public life, to improve access for women to education and to guarantee them access to employment opportunities.

21. While noting the efforts of the State party to reduce violence against women in Algeria, the Committee remains concerned by the absence of any stipulation in criminal law on the subject, and, in particular, by the lack of a definition of domestic violence and marital rape. It also regrets the lack of information on the national strategy against violence towards women (Covenant, arts. 3 and 7).

The State party should:

(a) Intensify its efforts to raise awareness among and educate State officials, in particular the police, and the population at large about the need to combat violence against women;

(b) Amend its legislation in order to define and criminalize domestic violence and marital rape.

22. The Committee notes with concern the reports that certain categories of asylum-seekers, including persons with refugee status granted by the Office of the High Commissioner for Refugees, do not have access to the asylum procedures in effect pursuant to Algerian legislation and thus risk being detained as illegal immigrants and returned (Covenant, art. 7).

The State party should guarantee every asylum-seeker access to the procedures established by law. The State party should refrain from expelling asylum-seekers or persons who have been granted refugee status, in accordance with the principle of non-refoulement, especially when such persons risk being subjected to torture and ill-treatment in their country of origin.

23. While noting the State party's replies, the Committee is concerned that some activities leading persons to convert from Islam to another religion have been criminalized and that article 11 of Ordinance No. 06-03 establishing the conditions and rules for the practise of faiths other than Islam does not specify exactly which activities are prohibited (Covenant, art. 18).

The State party should ensure that its laws and practices regarding religious activities are brought into line with article 18 of the Covenant.

24. While taking note of the pardon granted to some journalists in July 2006, the Committee nevertheless notes with concern that many journalists have been and continue to be subjected to pressure and intimidation, or even measures of deprivation of liberty, by the authorities of the State party. It is also concerned that the 2001 amendment to the Criminal Code makes it an offence to defame and insult State officials and institutions and that such offences are subject to severe penalties, in particular imprisonment (Covenant, art. 19).

The State party should guarantee the exercise of freedom of the press and the protection of journalists, in accordance with article 19 of the Covenant. In addition, the State party should encourage the re-establishment of an independent journalists' organization to deal with matters of professional ethics and conduct. The State party should also amend its legislation in order to decriminalize defamation.

25. The Committee is concerned that many human rights organizations and human rights defenders are not able to pursue their activities freely, including their right of peaceful demonstration, and are often subjected to harassment and intimidation by State officials (Covenant, arts. 9, 21 and 22).

The State party should respect and protect the activities of human rights organizations and human rights defenders. It should ensure that any restrictions imposed on the right of peaceful assembly and demonstration and on the registration of associations and the peaceful pursuit of their activities are compatible with articles 21 and 22 of the Covenant and also that the Information Act (No. 90-07) of 3 April 1990 is in conformity with the Covenant. In this connection, the State party should guarantee the right of any association to appeal against any refusal of registration.

26. The Committee notes with concern that some provisions of the Criminal Code, in particular article 338, prohibit private sexual activity between consenting adults of the same sex (Covenant, arts. 17 and 26).

The State party should revoke these provisions.

27. The Committee sets 1 November 2011 as the date for the submission of Algeria's next periodic report. It requests that the text of the State party's third periodic report and the present concluding observations should be published and disseminated, as appropriate and in a timely manner, throughout Algeria. It further requests that the next periodic report should be brought to the attention of civil society and the non-governmental organizations operating in the State party.

27. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should submit information within one year on the follow-up given to the Committee's recommendations as set out in paragraphs 11, 12 and 15 above. The Committee requests the State party to include information in its next report on the other recommendations of the Committee and on the application of the Covenant as a whole.
