



# Algeria

## Contribution to the Universal Periodic Review (UPR)

### Alkarama for Human Rights

20 November 2007

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### Abstract

Algeria, which was a member of Council of Human Rights from its inception for a period of one year, stated in its letter of application that it was "convinced that establishment of the rule of law and the promotion of a culture of human rights are the key to its stability and prosperity. "

It is true that after the army's bloody suppression of uprisings by young people in October 1988, which caused the death of at least 500 people, Algeria has undergone a genuine political opening. Freedom of association and expression were enshrined in a new Constitution. It was at this time that Algeria ratified major international instruments including the International Covenant on Civil and Political Rights, the Optional Protocol (I), the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture.

This "democratic interlude" was short-lived. The authorities interrupted the country's first free and transparent parliamentary elections since independence using the pretext that a party tarred as undemocratic (Islamic Front for Salvation, FIS) looked sure to win. The country was then placed under the command of the army on 11 January 1992. The President of the Republic was forced to resign, Parliament was dissolved and the constitution suspended. On 9 February 1992, the state of emergency was introduced. It is still in place sixteen years later. A wide-ranging decree defining terrorist acts was enacted in September 1992. Although it has been repealed, its key enforcement provisions have been incorporated in the Algerian penal code. These include the extension of police custody to 12 days, the doubling of penalties for acts classified as terrorist, the lowering of criminal responsibility to 16 years, etc.

The country had no constitutional institutions for nearly three years. It was only in 1996 that a semblance of democratic institutions was established, with the promulgation of a new Constitution. These institutions are, however, closely controlled by the military, particularly by the leadership of the secret services, the Department of Intelligence and Security (DRS). The latter controls the country's political, economic and social situation through a procedure called "empowerment". Any promotion or appointment to a position of responsibility in the administration or the state must be approved by the DRS.

This service may also oppose any candidate for whatever elective office even though the formal decision of rejection is taken by the Ministry of Interior.

Thus, many citizens from different political parties, whether from the opposition or even the "Governmental Coalition" composed of the three parties that support President Bouteflika (FLN, RND, HMS) were denied the right to present their candidacy at the last parliamentary or local elections.

Similarly, all citizens who had been elected in the municipal elections of 1990 or the 1991 legislative elections on the lists of the Islamic Salvation Front (FIS), or simply suspected of having supported or being sympathetic to the party saw their applications systematically rejected – even if they had been submitted by other approved parties - on the basis of their prior membership of FIS. This permanently removed them from participation in the country's political life.

Under the guise of combating terrorism, serious violations of human rights were committed by the security forces, as well as the militias set up by the army since 1994. Thousands of people were administratively detained in internment camps south of the country, some of them for nearly 4 years (officially these camps were closed in late 1995). Tens of thousands of people were arbitrarily arrested and detained, the practice of torture systematic and widespread, and tens of thousands of people were summarily executed or were victims of enforced disappearances.

All this deserves mention because the repressive judicial structures put in place following the introduction of the state of emergency to combat the opposition, whether peaceful or armed, are still in place. Even though there have been several heads of state and many different governments since 1992, the DRS leadership has not changed.

Under the presidency of Abdelaziz Bouteflika, since April 1999, the authorities claim to have entered a new phase: one of civil concord, peace and national reconciliation. In reality, members of armed groups who surrendered benefited from the partial or total extinction of prosecution regardless of their acts, depending on the extent to which they collaborated with the authorities. Security force members have been completely amnestied, since any complaint against them is legally void. Although it was ultimately forced to recognize the magnitude of the phenomenon of enforced disappearances, the Algerian State alleges it has settled the matter by compensation. Finally, any criticism of the State within or outside the country is can lead to a criminal conviction.

### **1. The state of emergency**

According to the Algerian Constitution, a state of emergency can be declared only for a specified period and can be extended only after approval by Parliament. Introduced on 9 February 1992, it was renewed a year later for an indefinite period. The Algerian authorities claim that its establishment "does not affect the continuation of the democratic process, and the exercise of fundamental rights and freedoms continues to be guaranteed".<sup>1</sup> But, Prof. Issad, a well-known lawyer in Algeria, who was mandated by the President to head an inquiry into the events in Kabylia in 2001, found that the arrangements put in place by the military authorities gave them exorbitant powers and represented a slide from a state of emergency to a state of siege.

The increasingly chaotic legal arsenal that expands the army's prerogatives has led to major restrictions of civil and political rights, including those guaranteed by the ICCPR. The Human Rights Committee noted in its remarks on 1 November 2007 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". A concrete example of this was the government's decision in June 2001 "to suspend until further notice the organisation of marches in Algiers." This prohibition is maintained to this day.

### **2. Some elements of the legal arsenal of repression**

The legal arsenal currently in place in Algeria comprises, among other things:

a) A definition given by the Algerian penal code of acts characterized as subversive or terrorist groups such as the one borrowed from that decree in articles 87 and 87 of the Penal Code, which allows an extremely broad interpretation and considerably restricts individual rights and fundamental freedoms.

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<sup>1</sup> Third periodic report to the Human Rights Committee of the United Nations on September 22, 2006. The final conclusions of the Committee were published on 1 November 2007.

b) A provision under which a person suspected of a connection with a terrorist act can be held for 12 days in solitary confinement, without contact with his family or a lawyer or a doctor.

c) The penalties for acts described as terrorist were doubled by comparison with the original penal code.

d) The age of criminal responsibility was lowered to 16 years which represents a clear divergence from international standards.

e) Confession obtained under torture is not formally banned for use in the courts as evidence.

### **3. Torture**

Persons suspected of terrorist activities are in the majority of cases arrested by the DRS and held in secret detention for periods ranging from a few days to several months. Some, like Fatmia Mohamed and Mohamed Rahmouni, arrested on 6 June and 18 July 2007, have never been seen again.

Those arrested are still routinely subjected to torture during the first phase of their incommunicado detention, which is itself a form of torture. Apart from beatings, the most commonly used methods are the cloth, hanging from the wrists and the administration of electric shocks to all parts of the body. M'hamed Benyamina, an Algerian living in France, was arrested during a trip to Algeria upon the request of the French authorities. Arrested in September 2005, he was held incommunicado for more than five months and tortured. The Working Group on Arbitrary Detention noted his arbitrary detention in November 2006. Mounir Hammouche, arrested on 23 December 2006 and detained incommunicado, died as a result of torture. To this day, the family has not had access to the autopsy report which the authorities claim was carried out.

Confessions obtained under torture are recorded in statements which victims are then made to sign without being allowed to read them. At the end of their incommunicado detention, victims are routinely forced to sign a document stating that they were well treated. Very few victims dare to report their torture, even before a judge.

Judicial practice shows that the courts routinely take into account the statements obtained during preliminary investigations carried out by the security services, even if the defendants say they were tortured and abused. Incommunicado detention for prolonged periods is useful to erase all traces of beatings.

### **4. Arbitrary Detentions**

a) Custody is often extended beyond the 12 days provided by law and can be prolonged to several months without access to a judicial authority and without the possibility of contact with family or a lawyer.

b) Persons are held in secret detention after the announcement of their arrest for several years, and are convicted in absentia without appearing before a trial court.

c) Provisional detention often exceeds the maximum period of 16 months (and 20 months in the case of crimes described as subversive), without the accused being presented before a jurisdiction to decide their case. People can be held for years while they await trial.

Malik Medjnoun, kidnapped in Tizi-Ouzou on 28 September 1999 by the DRS, tortured and detained incommunicado at the Antar Ben Aknoun Center for over eight months, has still not been found. The instruction of the procedure resulted in a decision to referral him to the criminal court of

Tizi-Ouzou on 10 December 2000. His case was to be heard on 5 May 2001. It has since been postponed indefinitely. Despite the Committee finding that the Algerian state had breached Article 7, paragraphs 1, 2 and 3 of Article 9 and paragraphs 3 a) and c) of Article 14 of the Covenant, Malik Medjnoune has still not been judged after nearly 8 years of imprisonment including 8 months in solitary confinement in a DRS center.

## **5. Enforced Disappearances**

It is well known that all elements of the Algerian security services, including DRS officials, soldiers, gendarmerie, police forces and paramilitaries were engaged for nearly a decade in the massive and systematic practice of arbitrary arrests during which caused 7,000 civilian casualties according to the most moderate estimates, and up to 20,000 according to some sources. It was a practice coordinated at a national level, conducted in characteristic and identifiable ways. Nearly a thousand cases have been submitted by our organization alone to the UN's Working Group on Arbitrary Detention. Not one of these cases has been clarified by the Algerian authorities.

The systematic and widespread enforced disappearances in Algeria constitute crimes against humanity under international criminal law (Article 7 of the Rome Statute and Article 5 of the International Convention for the Protection of all persons against enforced disappearances.)

The Human Rights Committee expert Sir Nigel Rodley rightly described this practice as a crime against humanity during his consideration of the 3rd periodic report on Algeria at the meeting of 23 October 2007.

After several years of systematic denial, the Algerian state was forced to acknowledge the existence of this phenomenon in 6146 officially recognized cases, which were attributed to government agents. However, it dismissed these as individual mistakes. The Algerian government refuses to investigate these crimes to prosecute and punish the perpetrators, claiming that the "government is responsible but not guilty".

With the new legal framework of so-called national reconciliation, the Algerian state hopes to put an end to the issue of perpetrators' accountability for crimes including disappearances by enshrining their amnesty in the law (Art. 45 of the order). Meanwhile, victims' families are encouraged to apply for compensation; to qualify, they must go through a humiliating bureaucratic and judicial process that requires them to state that their relative died while fighting on the side of terrorist groups.

The associations of families of missing persons, to which the authorities have denied proper accreditation, continue their fight to be told the fate of their relatives, despite being regularly repressed.

Enforced disappearances have not completely ceased with President Bouteflika's accession to power. They are rare, but cases continue to be recorded (see the two people mentioned above, section 3). The latest case of enforced disappearance recorded by NGOs concerns Kamal Akkache, who was kidnapped on 11 September 2007 around 2 in the afternoon in Algiers by civilians who identified themselves as agents of the DRS. The family has not heard anything about him since.

## **6. Massacres and summary executions**

In the early 90s, summary executions took place every day in neighbourhoods known to support the FIS. During raids and district closures by military police and special forces, dozens of people were arrested. They were murdered and their bodies thrown on the highway.

Large-scale massacres began in 1996. They reached their height in 1997-1998 with the killings in Rais, Bentalha, Sidi Youcef, Relizane and other places, where in one night, tens or even hundreds of people were killed, often having their throats cut. The Algerian government has refused to investigate the perpetrators and instigators of the killings, saying they were known as members of terrorist groups. But the few trials of alleged perpetrators of massacres that did take place were unfair and hasty. Until today, responsibilities have not been established and there remain serious questions regarding the role of the DRS and the army in the massacres.

The Committee on Human Rights, in its final findings, reiterated its demand that "all appropriate measures be taken to ensure that serious violations of human rights brought to its attention, such as massacres, torture, rapes and disappearances be investigated and those responsible for such violations, including state officials and members of armed groups, be prosecuted for their actions. "

## **7. The application of the Charter for Peace and National Reconciliation**

Under the pretext of wanting to recover from the "national tragedy" of the 90s, so-called reconciliation measures were recommended. However, the ordinance promulgated in February 2006 violates basic principles adhered to by the Algerian state:

a) Members of armed groups who surrendered to authorities were exempted from prosecution or received reduced penalties (Chapter 2) if they did not carry out massacres, bombings or rape. Those already convicted are eligible for pardon. But the application of these measures is not transparent and often discriminatory.

b) Security services members who committed serious human rights violations cannot be prosecuted (art. 45). All complaints are declared inadmissible. This measure is equivalent to an amnesty and is contrary to the fundamental right to effective remedy imposed by international texts.

c) Finally, any statement or act which it is thought could harm the image of Algeria is punishable by a sentence of three to five years' imprisonment (art. 46). According to the Human Rights Committee, this violates the right to freedom of expression.

## **Conclusion**

Contrary to the assertions of the Algerian government, the various measures recommended by the law called "civil concord" or the "Charter for Peace and National Reconciliation" have not helped to overcome the feeling of injustice produced by the situation of impunity. Furthermore, serious violations such as enforced disappearances, incommunicado and arbitrary detention and torture continue to be reported. To this day, the authorities refuse to officially recognize most human rights associations and therefore pay no attention to their work and claims. The Universal Periodic Review encourages States to "carry out extensive consultation at national level with all stakeholders." To our knowledge, no independent human rights organization has been consulted as a result.