



# Algeria

## Follow up to the Committee Against Torture's recommendations

**Alkarama for Human Rights, 16 July 2009**

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## **1. Introduction**

In the context of the review of Algeria's third periodic report, the Committee Against Torture requested the State Party to provide, within one year, information on the action it had taken to follow up on Recommendations set out at paragraphs 4, 6, 12 and 15 of its final report.

With the exception of the comments of a general nature (CAT/C/DZA/CO/3/Add.1) of 20 May 2008, which had already been provided orally in response to the Committee's Concluding Observations on 2 and 5 May 2008 by the members of the Algerian delegation, no action has been taken on these Recommendations to date.

Alkarama now presents its observations regarding the relevant recommendations for the Committee Against Torture's consideration. We recall that we submitted a detailed alternative report in the context of the periodic review.<sup>1</sup>

Alkarama recalls that it concentrates its work on four priority areas; arbitrary detention, enforced and involuntary disappearances, torture, and extrajudicial executions. We base our work primarily on the documented individual cases we submit to UN Special Procedures and Treaty Bodies, as well as our contacts with local actors including victims, their families, lawyers and human rights defenders.

Our organisation also takes this opportunity to bring to the Committee Against Torture's attention to the fact that the Algerian Government has not followed up on the Recommendations issued by the Human Rights Committee at the end of the last review of their periodic report, nor to those set out during the Universal Periodic Review (UPR) in April 2008.

Also, to date, no follow up has been given to the requests made over many years from the Special Rapporteurs on torture, disappearances and extra-judicial and summary executions for a country visit.

Finally, we must recall once more that the Algerian Government has still not made public the Committee's Concluding Observations.

## **2. Recommendation at paragraph 4 of the CAT's Concluding Observations: the Definition of Terrorism and the State of Emergency**

**Paragraph 4 of the Committee Against Torture's Concluding Observation states that "the State party should make sure that counter-terrorism measures are consistent with the commitments undertaken by Algeria under the Convention. The State party should also ensure the strict implementation of the Convention, particularly article 2, paragraph 2, which stipulates that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. In addition, the definition of terrorist and subversive acts should not give rise to interpretations whereby the legitimate expression of the rights established under the Covenant on Civil and Political Rights can be sanctioned as a terrorist act. The State party should also review the need for extending the state of emergency in the light of the criteria laid down in article 4 of the Covenant, to which Algeria is a party."**

In the Algerian Criminal Code, the chapter entitled "Crimes Qualified As Terrorist or Subversive Acts" (all articles listed under 87 bis) which gives a definition of terrorism, is an exact copy of chapter 1 of the Legal Decree No. 92-03 of 30 September 1992 relating to the "the struggle against subversion and terrorism". We recall that the institution which promulgated this exceptional Decree, the "High Committee for the State", was anti-constitutional, as it was created after the interruptions of pluralist legislative elections of January 1992, the forced resignation of the President of the Republic, and the dissolution of Parliament.

This definition is also used in Ordinance No. 95-11 of 25 February 1995 which modifies the Criminal Code. Furthermore, other provisions from this same exceptional Decree, also contrary to fundamental

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<sup>1</sup> [http://www2.ohchr.org/english/bodies/cat/docs/ngos/ReportAlkarama\\_CAT4apr08.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/ReportAlkarama_CAT4apr08.pdf)

principles of the International Covenant for Civil and Political Rights and the Convention Against Torture ratified by Algeria, have also been integrated into the Criminal Code.

It therefore follows from this that the definition of terrorism which is currently in force in domestic law was never submitted to a parliamentary debate in Algeria, and was simply the renewal of an exceptional legal norm.

As for the state of emergency, which was promulgated in February 1992, it is maintained despite never having been renewed formally, in violation of an article of the Constitution which stipulates at article 91 that "the duration of the state of emergency or the state of siege cannot be extended unless with the approval of the parliament sitting in both chambers convened together." Since the enactment of the state of emergency, the Algerian Parliament has never discussed, debated or voted its enactment, which de facto falls solely under the executive power.

Article 92 of the Constitution states that the organization of the state of emergency and the state of siege can only be established by a constitutional (fundamental) law – such a law has never been enacted.

After the brutal repression of the peaceful protest movements in 2001 at Kabylie, which resulted in the death of more than 100 protesters, the President of the Republic mandated a Commission of Inquiry headed by Professor Mohand Issaad, which provided two reports to the President. In its second report, the Commission referred to Presidential Decree No. 92/44 of 9 February 1992 regarding the introduction of the state of emergency which the Commission related to other texts, Orders, which had never been published. The Inter-Ministerial Order of 10 February 1992 (National/Internal Defence) named the Ministry of Interior as "responsible for the maintenance of order at the national level". On the other hand, the Inter-Ministerial Order of 25 July 1993, (also not published), links the operations to restore order (assigned to the military) to its struggle against subversion and terrorism.

The Commission of Inquiry concludes that "the chronology of the texts leads one to find that there has been a subtle slide from the state of emergency towards something that is closer to a state of siege. The 1993 Order give exclusive powers to the Commanders of the military regions which is characteristic of a state of siege."<sup>2</sup>

In light of this lack of transparency which extends to legal texts and regulations, no-one can be sure whether this legislation is still in force, and by consequence, the formal attribution of powers with regard to security issues remains unclear.

The Algerian Government explained in its comments to the CAT's Observations that only one measure relating to the state of emergency is still in force – that relating to the requisition of military units by the Minister of Interior for missions relating to public order and security. However, contrary to the Algerian Government's assertion, in reality, other articles of a repressive or restrictive nature of the Presidential Decree No. 92/44 of 9 February 1992, regarding the establishment of the state of emergency, continue to be applied. We will now simply mention three of the articles which remain in force today.

**Article 4.4** grants power to the Minister of Interior to assign people considered to be 'harmful' to house arrest. Today, even more so than in the past, citizens are subjected to administrative decisions of "house arrest"; an official document, of which the detained person is never informed, is issued by the Ministry of Interior afterwards to justify their long-term arbitrary and incomunicado detention in DRS centres.

**Article 7** allows the Minister of Interior and the *wali* (Governor) to prohibit, by issuing an Order, marches or demonstrations that may be "likely to disturb public order". According to these

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<sup>2</sup> Dernier rapport de la Commission nationale d'enquête sur les événements de Kabylie (Last report of the National Commission of Enquiry on the Events of Kabylie), December 2001, published in Le Jeune Indépendant, 30 December 2001, [http://www.algeria-watch.org/farticle/revolte/issad\\_complement.htm](http://www.algeria-watch.org/farticle/revolte/issad_complement.htm).

exceptional legal provisions, peaceful marches or any type of public event have been strictly prohibited in Algiers since 18 June 2001. Many public meetings in other regions of the country have been forbidden. Requests for authorisations for peaceful protests against the war in Iraq in 2003, in Lebanon in 2006 and Gaza in 2009 were also denied. An international seminar on "truth, peace and reconciliation" was supposed to be held on 8 February 2007, with the participation of experts, international and Algerian NGOs and families of victims was prevented from taking place at the last minute when panellists and participants were already present. A training seminar organised by the Ligue algérienne de défense des droits de l'homme (Algerian Human Rights Defence League) for journalists was to be held in Zeralda on 26, 27 and 28 May 2009, and was banned by the administration of the wilaya (Governorate) of Algiers.

**Article 10** provides for the possibility for military courts to judge civilians in suspected cases of terrorism. This provision is still applied to date.

For example, Mr Mohamed Rahmouni was abducted by armed civilians on 18 July 2007 and subsequently disappeared, and was finally transferred to Blida Military Prison six months later. He was supposed to appear before a military court.<sup>3</sup> This also occurred in the case of Mr Moussa Rahli who was disappeared on 17 March 2009 following his arrest. He was finally found on 20 April 2009 at Blida military prison.<sup>4</sup> Both were tortured by DRS agents and neither had access to a lawyer.

The continuation of the state of emergency is regularly subjected to discussion, as certain independent political parties demand it be brought to an end as it only serves to regulate and control political activity which is already reduced to a bare minimum. The authorities insist on the need for it to remain in place as terrorist attacks continue to happen. The president of the NHRI (recently downgraded to ICC Status B), Mr Ksentini, shares this view, believing the State must have a strong legal arsenal in the form of the state of emergency in order to eradicate terrorism.<sup>5</sup> However, this attitude contradicts the fact that terrorism is officially declared as being "defeated", "residual", or "reduced to certain pockets"<sup>6</sup> by the Minister of Interior, which should no longer justify the continuation of this exceptional situation for more than two decades.

The legal texts in force allow for the repression of terrorism without needing to resort to the state of emergency which instead serves to severely limit public freedoms to the extent that it criminalises all partisan activities and peaceful associations.

### **3. Recommendation at paragraph 6 of the CAT's Concluding Observations: Secret Detention Centres**

**Paragraph 6 of the Committee Against Torture's Concluding Observation states that "the State party should ensure that all places of detention, including those run by the Intelligence and Security Department, are immediately placed under the control of the civilian prison administration and the prosecutor's office. It should also ensure that the competent judicial authority takes the necessary steps to look into the allegations concerning the existence of secret detention centres run by the Department."**

People suspected of, or of providing support to, terrorist activities are very often detained secretly in centres controlled by the DRS (Département du renseignement et de la sécurité – Department for Research and Security). These centres, known as the CTRI (Centre territorial de recherche et d'investigation – Territorial Centre for Research and Investigation), are found in every military region. There is also the "Antar" Centre, headquarters of the CPO (Centre principal des operations – Main

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<sup>3</sup> Collectif des familles de disparu(e)s (Collective of the family of the disappeared), Mohamed Rahmouni, passible de la peine de mort , est privé de son droit à l'assistance d'un avocat (Mohamed Rahmouni, punishable by death, is deprived of his right to assistance from a lawyer), 3 September 2008.

<sup>4</sup> OMCT, case DZA 140409.1. Follow up of the case DZA 140409.1, 23 June 2009

<sup>5</sup> Imbroglio autour de l'article 91 de la Constitution (Imbroglio around article 91 of the Constitution), N. K., Le Jeune Indépendant, 28 April 2005.

<sup>6</sup> Réunion hier présidée par Ali Yahia Abdenour Pour la levée de l'état d'urgence (Meeting chaired yesterday by Ali Yahia Abdenour for a lifting of the state of emergency), Le Matin, 17 June 2003

Centre of Operations), linked to the DCE (Direction du contre-espionnage – Direction for Counter-Intelligence) which is situated in the residential neighbourhood of Hydra, overlooking Algiers.

The Algerian Government categorically denies the existence of places which are outside the control of the law, adding that the authors of such allegations are not able to supply documented files. However, it must be stated that there are reoccurring testimonies of people who have been detained in these places. It is significant to point out that strangely, the Algerian Government does not contest the information provided by NGOs of cases of people detained in secret over long periods of time in unknown places. When these people are presented before a criminal jurisdiction, the file does not mention or indicate the place where these people were detained nor even the place where the person was regularly interrogated by the DRS services.

It appears that for former Guantanamo prisoners, the legal *garde à vue* period before their appearance before the public prosecutor's office of 12 days (even if it takes place in secret in a DRS centre) has been respected, which is a sufficiently exceptional fact for it to be raised by observers. However, for the most part, the *garde à vue* can be prolonged over several months. To justify secret detention in DRS premises, victims are subjected to an administrative decision of 'home detention'. This document, established by the Minister of the Interior after the fact to justify their secret detention does not mention the place where this measure was executed either.

We recall that the United Nations Working Group on Arbitrary Detention declared that:

The use of "administrative detention" under public security legislation [...] resulting in a deprivation of liberty for unlimited time or for very long periods without effective judicial oversight, as a means to detain persons suspected of involvement in terrorism or other crimes, is not compatible with international human rights law.<sup>7</sup>

During these last two years, and even very recently, NGOs have found that secret detentions following recent arrests last beyond the legal length for *garde à vue*:

For example, Mr Fethi Hammaddouche, 24 years old, was released without having been charged on 12 October 2007 after he had been disappeared after his arrest by the DRS on 2 March 2007. He does not know where he during his secret detention which lasted more than 7 months.

Mr Mohamed Fatmia was brought before the court of Sidi M'hamed (Algiers) on 18 November 2007 and incarcerated at the El-Harrach prison. He had been held in secret detention for more than 5 months at the DRS 'Antar' centre, where he was brutally tortured during secret detention which was officially justified as being 'home detention'.

Mr Mohamed Rahmouni, (previously mentioned) who disappeared on 18 July 2007, was transferred to Blida military prison after more than 6 months of disappearance, that is to say, in secret detention in a DRS centre. He does not know where he was detained during this time.

Mr Kamal Akkache, aged 36, was abducted on 11 September 2007 at El Mouradia (Algiers) by DRS agents, and reappeared at the beginning of May 2008, that is to say, after 7½ months of secret detention in an unknown place. His family was able to visit him in the Serkadji prison (Algiers). He told them that the first two months of his detention had been 'months of hell', referring to the torture and ill-treatment he suffered.

Alkarama submitted the case of Mr Adel Saker to the Working Group on Enforced Disappearances and the Special Rapporteur on Torture. He had already been subjected to several arrests and had been detained incommunicado in a DRS centre for more than two years. On 26 May 2008, he was again summoned to the Police Headquarters of Tamalous Daïra (County) (Skikda wilaya – Skikda Governorate). He went there, and did not come out. Police officers denied his arrest and detention for 5 months.

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<sup>7</sup> Report of the Working Group on Arbitrary Detention, E/CN.4/2005/6, para. 77.

On 25 October 2008, following numerous complaints formulated by his family, and after their insistence, his brother Mohsine Saker was summoned by the police who informed him of a *procès verbale de constat* stating that Adel Saker had been "summoned to their service in an official manner on 26/05/2008" and that "his presence coincided with that of some elements of the Regional Centre for Research and Investigation of Skikda who requested that he be transferred to them for a similar enquiry", and that "after the Prosecutor of the Tamalous Republic having been informed, he was transferred to the requesting party (editor's note: the DRS) against discharge and after having been presented to a doctor from the local Tamalous hospital."

Before this date, neither the Tamalous police who had arrested him, nor the Prosecutor of the Republic who was territorially competent, or the public prosecutor - under whose authority, theoretically, all police officers are placed – recognised Mr Saker Adel's arrest and detention.

The prosecutor of the Republic of Tamalous and the General Prosecutor of Skikda both affirmed to his family that they were not informed of his arrest and also refused to register a complaint or to start an enquiry.

Despite the fact that it is noted in the official document given to the family that the public prosecutor was aware of the victim's arrest and secret detention by DRS services, no enquiry on the abduction and arbitrary detention was opened by the magistrates cited above.

This case demonstrates well the incapacity of the Algerian justice system to investigate grave violations or to intervene in DRS activities. Victims and NGOs have limited means to access official documents to establish the fact of secret detention, and it is exceptional to be able to obtain such documents as happened in this case.

Adel Saker was finally presented before the General Prosecutor of Skikda on 12 April 2009 after 11 months of 'disappearance', during which – according to his testimony – he believes he was, without being sure, once again detained in the DRS centre in Antar where he was subjected to severe torture.

However, the Algerian authorities regularly affirm that all places of detention are listed and placed under the authority of the public prosecutor who is territorially competent and cite as proof that "since 2003, the International Committee of the Red Cross has been authorized to carry out unannounced visits to police stations and gendarmerie brigades throughout the country"<sup>8</sup>. But what of the barracks and secret DSR detention centres where numerous detainees are being detained incommunicado?

#### **4. Recommendation at paragraph 12 of the CAT's Concluding Observations: Missing Persons**

**Paragraph 12 of the Committee Against Torture's Concluding Observation states that "the competent judicial authorities have the responsibility to launch investigations spontaneously without requiring individual complaints to be registered in order to shed light on the fate of missing persons, identify, prosecute and punish the perpetrators of acts of enforced disappearance and adequately compensate the families of missing persons. The State party should make a commitment to investigate every case of enforced disappearance and communicate the results of investigations to the families of missing persons, including by immediately making public the final report of the ad hoc National Commission on Missing Persons.**

**The Committee also considers that the publication of the names of missing persons registered since 1990 could be very useful during the gathering of information from persons who could provide facts to help move the investigation forward. The Committee also hopes that the State party will submit to it as soon as possible the list of missing persons registered since the 1990s."**

The ad hoc commission established in 2005 by the President of the Republic and headed by the President of the NHRI, Mr Ksentini, established the number of disappeared as being 6,146 after

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<sup>8</sup> CCPR/C/DZA/Q/3/Add.1, Reply 14, <http://daccessdds.un.org/doc/UNDOC/GEN/G07/443/47/PDF/G0744347.pdf?OpenElement>

completing its work, but without publishing its final report (a fact already raised in Alkarama's alternative report dated 4 April 2008). The Minister for Solidarity recently recognised the existence of 8,023 cases of disappearances, but no list of names was ever made public. The Algerian Government notes in its comments to the CAT's Concluding Observations that "many of the recommendations contained in the report [of the Ad-Hoc Commission on the Disappeared] were incorporated into the implementing legislation for the Charter for Peace and National Reconciliation"<sup>9</sup>, without providing any further details.

The Government considers that the assessment of the identity of the disappeared is of a private nature, leaving this question to each family's consideration. However, when the families contact the public authorities to declare a disappearance, they are often forced to sign documents stating that their disappeared family member is a terrorist, even when victims were for the most part arrested at home in the middle of night by agents of the State who were fully identified.

The Government also justifies the fact that no list of names has been published by the desire not to reopen old wounds. However, the families demand to know what happened to their family members, if they are still alive, and if they are dead, in what circumstances they died. They also ask that the authors and those in charge of abductions be judged.

The CAT has recommended that the Algerian State "launch investigations spontaneously without requiring individual complaints to be registered" (see paragraph 12 of the CAT's Concluding Observation). However, the Algerian authorities justify the enforced disappearances as part of the "national tragedy" which struck the country and in its comments and the Government explains this tragedy of the disappearances by the "natural context brought about by terrorist criminality". It is necessary to underline the seriousness of an affirmation like this – in fact, this type of reply would justify crimes of enforced disappearances by a so-called "natural context".

The consequence of this is that the Algerian Government persists, against all evidence, in ignoring the responsibility of its agents in this crime, described as a "crime against humanity" by the expert Sir Nigel Rodley, during the review of periodic report by the Human Rights Committee.<sup>10</sup>

The Algerian authorities are regularly confronted with criticism from UN bodies which consider that article 45 of the Decree for the application for the Charter for Peace and National Reconciliation violates fundamental principles of international treaties due to the impunity it provides for security forces. However, they give assurances that victims of abuse committed by agents of the State can lay complaints, but in practise, the Prosecutor almost systematically refuses to register citizens' complaints.

Replying to the Human Rights Committee's question to "please indicate the number of complaints of summary execution, torture and ill-treatment lodged against State officials, notably members of the Intelligence and Security Department (DRS), and information on any investigations, prosecutions, punishments and compensation arising from those complaints (report, paras. 272-276 and 287-294)"<sup>11</sup> the government replied in October 2007 that:

All complaints about abuses or violations of citizens' rights and fundamental freedoms, including torture and ill-treatment, are investigated both by the institution that employs the person against whom the allegation is brought and by the police.<sup>12</sup>

But it specifies in the reply it provided the Committee Against Torture in March 2008 that: "No complaint has been lodged under article 45 of the Ordinance concerning the implementation of the Charter for Peace and National Reconciliation."<sup>13</sup>

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<sup>9</sup> CAT/C/DZA/CO/3/Add.1, para. 18, <http://daccess-ods.un.org/TMP/8400389.html>

<sup>10</sup> CCPR/C/SR.2495 of 31 October 2007, para. 5., <http://daccess-ods.un.org/TMP/1081653.html>

<sup>11</sup> CCPR/C/DZA/Q/3, para. 11, <http://daccess-ods.un.org/TMP/2234559.html>

<sup>12</sup> CCPR/C/DZA/Q/3/Add.1, p. 6, reply to the question 11 of the Human Rights Committee, <http://daccess-ods.un.org/TMP/7645604.html>

<sup>13</sup> Question 9 (CAT/DZA/Q/3, para. 9), reply to be found in CAT/C/DZA/Q/3/Add.1, para. 20, <http://daccess-ods.un.org/TMP/7645604.html>

However, families of the disappeared have been trying to lay complaints since the enactment of Decree No. 06-01 of 27 February 2006, such as Mrs Zohra Bourefis, who on 1 July 2007 contacted the tribunal of Taher (wilaya – Governorate - of Jijel) to lay a complaint of the abduction of her husband and of her son by agents of the state (gendarmes and military personnel). The Prosecutor of the Republic informed her on 17 January 2009 that a decision had been made to close the file, referring explicitly to article 45 of the above-mentioned Decree for the application of the Charter for Peace and National Reconciliation which prohibits victims from resorting to the justice system.

## **5. Recommendation at paragraph 15 of the CAT's Concluding Observations: Violence against Women**

**Paragraph 4 of the Committee Against Torture's Concluding Observation states that "the State party should ensure that the identified perpetrators of sexual violence are prosecuted and duly punished. It should also appoint an independent commission to investigate acts of sexual violence committed during the internal conflict and make the results of the investigation public. The State party should also ensure that all the victims of sexual violence committed during the internal conflict receive prompt and adequate compensation and medical, psychological and social rehabilitation. These recommendations are consistent with those contained in the report which the Special Rapporteur on violence against women, its causes and consequences, presented to the Human Rights Council (A/HRC/7/6/Add.2)."**

The media has raised the issue of the thousands of women who in the 1990s were raped by members of armed groups. No enquiry on this delicate subject has ever been made public. Even the approximate number of victims remains unknown.

It must be pointed out that the Decree does not recognise women who were victims of rape as "victims of terrorism". Nor are there any specific facilities for these women to turn to, being doubly stigmatised, for, on the one hand having been raped, and on the other, for having suffered violence at the hands of armed 'terrorist' groups.

## **6. Conclusion**

It seems essential to us to disclose that the context provided by the state of emergency which has persisted, in violation of the Algerian Constitution for more than 17 years, allows for the persistence of exceptional legislation, which also criminalises activities of a peaceful nature and severely restrains fundamental freedoms.

Numerous provisions of the Decree for the application of the Charter for Peace and National Reconciliation are incompatible with Algeria's commitments undertaken by ratifying international treaties, particularly articles 45 and 46 of this Decree which create a general impunity for facts which are, according to international law, of the nature of crimes against humanity.

It is only by clearly opposing this institutionalised impunity that the victims or their families can have the hope of regaining their rights to truth, justice and reparations.

In our view, it is illusory to fight against torture if the Government persists in refusing to recognise the existence of places of detention which are notorious for people continuing to be detained in secret for long periods. All these places must be placed under the control of the civilian judicial authorities.

Alkarama hopes that the information provided in this submission will be useful in the follow-up to the Committee's Recommendations. We remain available to the Special Rapporteur on Follow-Up should the Committee request any further information relating to matters raised in this submission, or for any other matter.

We will continue to monitor compliance by the Algerian government concerning its obligations under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and specifically implementation of the Committee's Concluding Observations, as they relate to our

areas of work. We will endeavour to continue submitting written information to the Committee in order to contribute to the implementation of human rights and the development of human rights measures in Algeria.