

HUMAN RIGHTS PUT ALGERIAN REGIME TO THE TEST

The illusion of change

Paris – April 2013

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Collective
of
Families
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Disappeared
in
Algeria

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Report 2011-2013

Methodology:

Members of the Collective of Families of the Disappeared in Algeria (CFDA) and activists working closely with the CFDA initially came together to form an editorial group. Several meetings were then held in the CFDA office in Paris to select topics to discuss and reflect on the methodology to be followed in preparation for this report. Once the group was formed, research was initiated on relevant topics, and different people in Algeria and France were contacted to gather information. The working groups were supervised by a coordinator.

Authentic research was conducted by the editorial group that conducted field investigations through which they were able to meet with families of the disappeared, Algerian associations, human rights defenders, independent trade unions and human rights activists who are active in the Algerian civil society.

This report is also based on the personal experiences of the members of the CFDA, who are both direct witnesses of violence committed against the families of disappeared such as during the weekly peaceful protests in Algiers, but also victims of physical and psychological violence in the form of harassment.

Finally, the authors of this report consulted numerous and various documents to support their argument (legal documents, international conventions, case law, reports for UN bodies, reports from international organisations of human rights, media reports, and urgent appeals to the Special Rapporteur of the UN and the African Commission on Human and Peoples' Rights (ACHPR), Algerian associations' websites, newspapers articles, etc).

This documentation gained from extensive research and the collection of testimonies of victims, human rights activists and Algerian lawyers enabled in-depth research, legal analysis and comparison of information gathered in order to denounce the violations committed.

The CFDA team would especially like to thank the families of the disappeared for their courage and perseverance, and all those who are determined to continue the daily struggle for the respect of human rights in Algeria by denouncing the abuses committed by the Algerian authorities, and have also contributed to the research.

The CFDA also thanks the defenders of human rights, human rights activists, independent trade unions, associations, lawyers and CFDA's many spokespersons without whom this extensive review of the human rights situation in Algeria could not have been realised.



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INTRODUCTION

This report, prepared by the CFDA team with the help of young human rights activist(s), covers a period during which an Arab geopolitical area has had many issues, some of which have had direct consequences in Algeria. Indeed, the period from January 2011 to the end of April 2013 was filled with the Tunisian and Egyptian popular revolutions followed by the foreign intervention in Libya and the protests by the bloodily repressed in Syria which have degenerated into civil war. Within this context of North African revolutions, autonomous unions including the National Autonomous Union of Public Administration Staff (SNAPAP) and the Algerian League for the Defence of Human Rights (LADDH) have created the National Coordination for Change and Democracy (CNCD). Among the main objectives assigned by the CNCD was the lifting of the state of emergency, which was declared in February 1992, as well as the channeling of energies for a peaceful fight for the respect of human rights and public freedoms, in which the CFDA was also involved.

If coordination of struggles within civil society for human rights and civil liberties is still to be conducted, the mobilisation of the CNCD led to the state of emergency finally being lifted in February 2011 (**Chapter 1**). After nineteen years! It is a symbolic victory because the lifting of the state of emergency was a Pyrrhic victory for human rights in Algeria. As done before in 1995, the political power has incorporated provisions from the regime of the state of emergency into the common law transforming rules of exception into rules of common law. Thus, the lifting of the state of emergency was accompanied by measures giving broad powers to the army in the fight against terrorism and legitimised the use of "safe houses" for arrested or surrendered terrorists. This practice, which already existed, has encouraged non-transparent negotiations between the regime and terrorists which have been out of any institutional control or public opinion. In addition, no real changes have been made to the daily life of Algerians, especially in the capital, where harassment caused by roadside checks undertaken by the security service still reign in a country where the official propaganda has been claiming for years that the "national reconciliation" policy has brought peace. With the formal lifting of the state of emergency and its accompanying «reforms», the regime wanted to maintain the illusion of change when, in reality, they continue to pursue the same goal: to repress and reduce all attempts made by society to organise themselves independently from political power and prevent the emergence of any intermediate structure between citizens and politicians, be it via associations, trade unions or political parties.

This continuity is symbolised by the general ban on all demonstrations in public spaces, which is without a doubt an arbitrary measure. No argument put forward by the regime has been able to justify such a measure (**Chapter 7**). Safety is the first reason given by the authorities. Thus, in terms of institutional policy, when the citizens demonstrate for work or any other reasons, only safety is threatened. Strangely, however, safety is not at stake when hundreds of thousands of sports supporters converge toward stadiums every weekend. Ironically, the authorities claim that protests are banned to better protect those who wish to protest. Therefore, in order to keep protestors safe, protests are simply forbidden! Should it be reminded that it is the State's responsibility to guarantee the conditions for a peaceful practice of freedom of assembly and demonstration, especially in peacetime, to ensure security without sacrificing civil liberties? This idea is undoubtedly not shared by the security regimes. The official propaganda also justifies the general ban by the lack of representation of people or organisations who want to organise these protests.

This is a particular concept of democracy whereby the responsibility of representing the citizens rests with the State. It is up to the governing body to represent their citizens, and not the other way round. It is significant that the law is only invoked to justify the ban protests. But how could it be otherwise, even under a security regime, when nothing in Algerian law justifies a general ban of demonstrations. However, the Algerian law is said to be largely inspired by the laws of democratic countries. The sad fact is that this general prohibition promotes riots as the only social means to express anger deeply rooted in the Algerian cultural landscape since the early 2000s because it prevents structured peaceful actions. In other words, this general prohibition maintains social violence. This negative effect on the society is a deadweight effect for the regime: on the one hand, it nips any collective, peaceful and organised public opinion in the bud; on the other hand, only the violent protests are visible in public which, according to some, upholds the fear of marches and peaceful protests, systematically presenting them as the source of potential uncontrollable violence.

This continuity is also symbolised by the intimidation and repression suffered by those who dare to defy the ban, and who are prosecuted for unarmed assembly whatever the reason: be it for power and gas cuts, denouncing procedures for allocating social housing or even for demanding the right to work. They are countless, more often than not anonymous and their situation is difficult

to establish and document. This is one reason why the examples in this report relate to the vast majority of people who demonstrated in a more or less structured framework organized by various groups, be them unionists, relatives of victims of forced disappearance, members of an association for the protection of Human rights among other things, or an informal association. These activists are particularly targeted by intimidation and legal prosecution because of their membership with structured rallying groups who peacefully demand their rights, be they civil, political, economic, social or cultural.

In practice, an act of solidarity is considered as a criminal offence as shown by the emblematic example of Abdelkader Kherba, an unemployed person who supported the strike of court clerks in the spring of 2012. He was charged, among other offences, of theft of function! An unemployed person must have no conscience or sense of solidarity. The message is clear: he must keep his suffering to himself, or better still with other unemployed people, and the protesting clerks must stay with other protesting clerks. Social division is thus to the social violence. Current practices show that the authorities are doing everything possible to ensure that the claims are done categorically and prevent any connection between the different groups and structures within civil society who wish to claim their rights and exercise their freedoms. Further to this, arbitrary practices and legislative arsenal rid freedom of trade unions and freedom of association of their meaning and hinder the creation of these entities, even if they are categorical and "well-behaved". It is, therefore, not coincidental that groups who do not wish to be restricted by categorical claims and who criticize their denied public freedoms head-on are particularly targeted. On a larger scale, although human rights organisations and independent trade unions are first and foremost targeted, all organisations wanting to preserve their autonomy and refuse to be subservient to the regime are, in practice, also affected, regardless of the nature of their activity.

The continuity is also present in the systematic refusal to register any new unions (**Chapter 9**), as shown in the example of the Teachers of Higher Education Union (SESS). In practice, the registration system is effectively replaced by a system of authorization. The law is still «liberal» in theory. This is no longer the case for the law on associations. One can only regret the passing of a self-declaration system under the old law, which despite its shortages was a "liberal" law, to an authorization system established by the regressive and draconian law of January 2012. This text is just a legal cover of the administration practices which prevailed during the nineteen years of state of emergency, starting with the refusal to provide a receipt when filing a record for the constitution of association. The replacement of the old law with a new one is part of the illusion of change that the regime seeks to maintain. This new law complicates the formation and activities of associations and facilitates their dissolution. It shows clearly the meaning

of «reforms» undertaken by the political regime: when despite its arsenal, the system cannot prevent the creation of autonomous spaces in society; it instead aims to tightly control them in order to annihilate the autonomy of these spaces. Likewise, the Information Act, intended to give more freedom to the media, had so many prohibitions that in reality, it became an incentive for self-censorship that already had a strong presence in the media (**Chapter 8**).

In general, the laws of 12 January 2012 adopted under the «reforms» – the organic Law No. 12-01 on the electoral system, the organic law no. 12-04 on political parties, the organic law no. 12-05 and the Law No. 12-06 on associations – are laws that contribute to the repression of society as shown in the analysis conducted by the CFDA, the SNAPAP and LADDH and coordinated by the Euro-Mediterranean Human Rights Network Rights¹. To put it colloquially, the sleight of hand that is these «reforms» is another way of tightening their hold on society, which brings to mind the famous “gains” of October 1988. Coincidence or symbolic message sent by the military regime, these laws were announced twenty years to the day of Chadli Bendjedid’s «resignation» in a context marked by the failure of the feeble political opening after the events of 1988, hammering the final nail into the coffin of the remains of the texts which symbolises it. To those who wish to convince us that respect for human rights and civil liberties are provided in our country and that there is no need for change because the Algerian people have already had their «Spring” in 1988, analyses and facts shown in this report refute this scathingly.

Further to presenting repression as liberty, the regime has been successful with an international communications operation with the Organic Law No. 12-03 on how to increase women’s access to representation in elected assemblies (**Chapter 5**). Women’s rights and legal equality between women and men is a theme that is constantly exploited by the regime. The latter considers the revisions of the existing law in this area most often in «packages» which puts those who defend the rights of women in an uncomfortable position. It should be reminded that Article 31a of the Constitution, on the promotion by the state of political rights of women and on which the organic law no. 12-03 bases its methods of application, was introduced during the revision of the Constitution on 15th November 2008. The same revision included the suppression of fixed presidential terms, putting an end to any hope of seeing in new heads of state ... Not only would it have taken 3 years for, the enforcement of the law establishing the State’s methods for promotion for women’s political rights for women’s political rights to come into effect, it came as part of the same “package» as regressive laws such as those relating to associations and

¹ EMHRN, “Political Reforms” or Additional Lock on Society and Politics in Algeria? A critical analysis. April 2012. This report is available on the EMHRN and CFDA websites at www.euromedrights.net and www.algerie-disparus.org

political parties. In addition to being very incomplete, as shown by the developments embodied in this report, the law has allowed the regime to cheaply give an image of being a progressive regime favorable to women's rights.

The rate of women serving in the People's National Assembly (APN) during the last legislative elections which has increased to more than 30%, compared to fewer than 10% in the previous legislature, has been hailed as an Algerian exception. This feminisation of the lower house of Parliament does not, however, solve the political problem. The new law on the electoral system still does not offer sufficient guarantees of ballot fairness and confidence amongst Algerians in the electoral system. The political system remains weak as evidenced by the low turnout for the 2012 parliamentary elections.

In addition, in formal terms of the relationship between political powers, the People's National Assembly (APN) is still weaker than the executive body and is unable to fully exercise their powers formally recognised by the Constitution. No debate worthy of the name has ever taken place in the meetings on the security situation or the lives of Algerian men and women and their access to housing, work or health care. We are still awaiting the great debate on serious or extensive violations of Human rights committed during the 1990s and in 2001 in Kabylie or, even a parliamentary commission to investigate corruption. Another persistent fundamental problem is still not on the legislative «power», but on legal equality between men and women. The Family Law, including its revised version, is still discriminatory against women in the context of marriage and its dissolution as well as issues concerning inheritance. Reserves to the UN Convention on the Elimination of All Forms of Discrimination against Women have not yet been lifted contrary to public statements by the Permanent Representative of Algeria to the United Nations in Geneva who would like national and international opinion to think that this is the case. Once again, the regime has shown its ability to maintain the illusion of change whilst it continuing to asphyxiate Human rights and civil liberties in our country. There are areas where continuity is assumed by the regime because it touches the heart of power and the current policy regime. This area is the impunity of perpetrators of serious and extensive violations of Human rights. It is not only about violations committed during the 1990s, but also those committed in Kabylie in 2001 against unarmed civilians by the security forces, in full sight of everyone.

The crimes of the 1990s are at the heart of CFDA's activities. In fact, CFDA refuses to allow perpetrators of serious or extensive violations of Human rights to evade justice, regardless of their occupation, whether they are State officials or members of armed Islamist groups. The CFDA refuses impunity and to forget and calls for Truth and Justice for which they have worked for over a decade. The CFDA has been fighting continuously since its creation for the rights of

victims of forced disappearance and their families (**Chapter 4**). And they naturally challenge the so-called Charter for Peace and National Reconciliation which sanctifies impunity and promotes forgetting. The CFDA's analyses and their results show that, contrary to what the regime affirms to the Algerian people and foreign partners, the «missing persons' file» is far from being closed. CFDA will continue to work tirelessly to shed light on the fate of thousands of victims of forced disappearances. The CFDA equally refuses to allow human rights violations committed by armed Islamist groups go unpunished. This has been its commitment as part of the Coalition of Victims of the '90s alongside associations of victims of terrorism, Djazaïrouna and Somoud.

This Coalition has developed an alternative Charter for Truth, Peace and Justice in 2010². Lack of development focusing on this issue in this report only shows that CFDA is currently unable to address all important topics in the field of Human rights in our country. It should not be understood as either disinterest or as a bias. Similarly, the financial approach adopted by the regime in the case of the deceased and injured people in the Black Spring of 2001 in Kabylie³, does not meet, as far as the CFDA is concerned, the requirements of the International Covenant on Civil and Political Rights policies, ratified by Algeria. Their demands of Truth and Justice also apply to the Black Spring. Who can be satisfied with Abdul-Aziz Bouteflika's claim, during his visit to Tizzy Ouzo in March 2009, that «from [his] position, [he] still does not know who [...] was responsible for these events»⁴ ? It is not coincidence that this is echoed 10 years later during a meeting at the Harcha stadium in Algiers in his statement «the missing are not in my pocket». This contempt and insult are a constant in the regime's approach to serious or extensive violations of human rights. Impunity is another permanent feature which this report will demonstrate in relation to forced disappearances. The CFDA wishes to include issues about other victims of serious or extensive violations in future periodic reports.

For the time being, the current report shows that the institutions whose mission it is to protect Human rights do not take their work seriously. This is particularly the case of the National Consultative Commission for the Protection and Promotion of Human Rights human (CNCCPDH) whose president seems to believe that his mandate consists of defending the policy of the president rather than Human rights (**Chapter 2**). Another institution, which is the legal system supposedly independent of the Constitution, is not independent of the executive body and is

² Available on the CFDA website at www.algerie-disparus.org

³ See in particular the Presidential Decree No. 02-125 of 7 April 2002 setting the rights of victims of events having accompanied the movement for the perfection of national identity

⁴ Kamel Amrani, «Huit ans après Bouteflika s'interroge. Qui a provoqué les événements de Kabylie?», Le Soir d'Algérie newspaper, 28 March 2009

under the supervision of the Department of Intelligence and Security (DRS) (**Chapter 3**). Some legal tools exist and are available to shed light on forced disappearances and other serious or extensive violations of Human rights. But they lack the essential: the desire for independence and independence of mind. For judges and citizens alike, respecting their freedom depends on their willingness to enforce it. This desire exists in all of these citizens, activists, trade unionists and others who demand respect for their rights (to work, to housing, to free expression, truth, justice, etc..) and who are subjected to judicial harassment with criminal prosecution for unarmed assembly.

This report also discusses some economic and social rights (**Chapter 10**), and the right to freedom of conscience and religion (**Chapter 6**). This report does not explore cultural rights, a topic as complex as it is important, but the CFDA would like to shed more light on this issue in future periodic reports. CFDA is planning to release a more complete and in-depth report in the near future, thanks to information provided by the many active campaigners for whom CFDA would like to thank for their trust.

Chapter 1 – THE FORMAL LIFTING OF THE STATE OF EMERGENCY



The state of emergency was established by Presidential Decree No. 92-44 of 9 February 1992 following the cancellation of the December 1991 elections won by the Islamic Salvation Front (FIS). Originally, the state of emergency was declared for a limited period of twelve months over the entire country. Then, new Decree No. 93-02 extended the state of emergency for an indefinite period, in violation of the Constitution of 1989 and that of 1996. Article 86 of the 1989 Constitution states «the duration of the state of emergency [...] cannot be extended without approval of the National People's Assembly». Article 91 of the Constitution equally states that «The duration of a state of emergency [...] cannot be extended unless with the approval of the parliament sitting in both chambers convened together».

The National Coordination for Change and Democracy (CNCD) was born after the January 2011 riots that rocked the country in parallel with the Arab Spring and the fall of Dictator Ben Ali in Tunisia. SOS Missing and the CFDA have actively participated in the movement initiated by trade unions, including SNAPAP and the Algerian League for the Defence of Human Rights (LADDH). The lifting of the state of emergency, in force for nineteen years, was one of the CNCD's main demands. Thus, fearing a popular revolution like the one in Tunisia and Egypt, Ordinance No. 11-01 was adopted on 23 February 2011 and brought an end to the state of emergency. This is, however, far from meeting the expectations of civil society in respect to public and individual freedoms because it has had no concrete positive result. Violations of human rights still persist. The lifting of the state of emergency in Algeria therefore remains fictitious.

Ordinance No. 11-01 on *lifting the state of emergency* was accompanied by two problematic texts. The first is Ordinance No. 11-02 of 23 February 2011 complementing Ordinance No. 66-155 of 8 June 1996 on *Criminal Procedure Law*. It introduces a law that is highly similar to an incommunicado detention. The second text is Ordinance No. 11-03 which further modifies and complements Law No. 91-23 of 6 December 1991 on *the participation of the People's National Army (ANP) in missions to protect public order outside exceptional situations*. Presidential Decree No. 11-90 of 23 February 2011 implementing Ordinance No. 11-03 now allows the ANP to participate in the *«fight against terrorism and subversion»* outside any exceptional situation, in other words, without declaring a state of emergency or a state of siege. This presidential decree briefly states the conditions under which the ANP units are put to use. This decree only has four articles. Article 1 states that *«the units and formations of the People's National Assembly are implemented and engaged in operations against terrorism and subversion in accordance with the provisions of the aforementioned Article 2 (paragraph 2) of Law No. 91-23 of 6 December 1991, modified and complemented»*⁵.

⁵ Article 2 of Law No. 91-23 of 6 December 1991: *«Les unités et formations de l'Armée nationale populaire peuvent être mises en œuvre, sur décision du Chef du Gouvernement, après consultation préalable des autorités civiles et militaires compétentes, pour répondre à des impératifs : de protection et de secours aux populations, de sûreté territoriale, de maintien de l'ordre.»*

During the long period where the state of emergency was maintained in violation of the Constitution, the authorities gradually incorporated exceptional measures into the common law (1). By adopting these new texts on the role of the ANP in the fight against terrorism and corruption (2), only succeeded in restricting the common law even further and in blurring the line between the law applicable to exceptional situations and the common law outside of exceptional situations.

1. The provisions of the state of emergency in national law

1.1. The definition of terrorism and corruption

Article 87 bis of the Penal Code introduced by the Ordinance No. 95-11 of 25 February 1995, defines acts of terrorism and corruption in very broad terms. Under this section, *«is considered a terrorist or corruptive act, any act targeting the State's security, integrity of the jurisdiction, stability and normal functioning of institutions through any action intended to:*

- *«Sow terror among the population and create a climate of insecurity, morally or physically detrimental to persons or endangering their life, liberty or security, or damaging their property;*
- *Impede traffic or freedom of movement on roads and assembly in public places;*
- *Attack the Nation's and Republic's symbols and desecrate graves;*
- *Negatively affect the means of communication and transport, take possession of or occupy unduly public and private property;*
- *Negatively affect the environment or introduce into the atmosphere, onto the ground, into the ground or in the waters including the territorial sea, a natural substance likely to endanger the health of humans or animals or the environment;*
- *Impede the action of public authorities or the freedom to practice their religion, public freedoms and the operation of establishments contributing to the public;*
- *Impede the functioning of public institutions or damage life or property of their agents, or impede the implementation of laws and regulations».*

This definition is so broad that acts committed without the use of weapons and which do not bring harm to life or property are considered as acts of terrorism and corruption . Thus, peaceful demonstrations on the street who are demanding change may be considered as a terrorist act under this text, and protesters could be prosecuted for acts of terrorism⁶. In this regard, the argument that Article 87 bis of the Criminal Code has never been applied in such a situation

⁶ EMHRN, *The Independence and Impartiality of the Judiciary in Algeria*, October 2011, p. 29

is not acceptable because it still poses a threat to potential demonstrators. The Committee of Human Rights of the United Nations considers that Article 87a of the Penal Code defines terrorist acts in an «especially broad» manner⁷ which «can lead to abuse»⁸. The Committee believes that this definition is contrary to the diverse provisions of the International Covenant on Civil and Political Rights (ICCPR), ratified by Algeria and which, under section 132 of the 1996 Constitution, have a greater value than law.

1.2. The military's almost discretionary powers in the fight against terrorism

1.2.1. Military tribunals

The army held many powers which it kept after the lifting of the state of emergency, and particularly in the context of military tribunals.

Under Article 25 of the Military Justice Code, military tribunals can be used to deal with cases of serious crimes and offences committed against the security of the State⁹ regardless of the profession of the instigators, perpetrators or accomplices, and when the applicable penalty is more than a five year prison sentence. The Criminal Court can retain, under section 248 of the Code of Criminal Procedure, a residual jurisdiction over crimes committed against the security of the State, when the applicable penalty is less than a five year prison sentence, as well as crime and common offences. These provisions clearly allow military tribunals to try civilians suspected of terrorism and corruption.

This competence is problematic in terms of Algeria's international commitments, but also in relation to the too broad a nature of the criminalisation of acts of terrorism and corruption. Algeria's international and regional commitments derive from the African Charter on Human and Peoples' Rights (ACHPR) of 1981 ratified by Algeria in 1987, in which military tribunals cannot try civilian¹⁰. Moreover, the Committee of Human Rights of the United Nations considers the PICDP, ratified by Algeria in 1989, authorises the trial of civilians by military tribunals under

⁷ Human Rights Committee, *Concluding Observations of Human Rights, Algeria*, 12 December 2007, CCPR/C/DZA/CO/3

⁸ Human Rights Committee, *Concluding Observations of Human Rights, Algeria*, 18 August 1998, CCCPR/C/79/Add.95

⁹ Penal Code, Second part, Volume III, Title 1, Chapter 1, Crimes and Offences Against the State Security

¹⁰ African Commission on Human and Peoples' Rights, Communication No. 224/98, *Media Rights Agenda v Nigeria*, 6 November 2000, § 62. See also the *Directives et principes sur le droit à un procès équitable et à l'assistance judiciaire en Afrique* (point L), 24 November 2011. This document is available on the website of the African Commission: <http://www.achpr.org/fr/>

very exceptional circumstances. In order to do so, it should be demonstrated that the ordinary civil courts are not able to provide trial for terrorism or acts of corruption¹¹. However, it is not proven that the Algeria's ordinary courts are unable to try persons accused of terrorism.

Chapter 1 of the Penal Code entitled «Crimes and offenses against State security» contains seven sections and 47 articles that provide for the vast majority of sentences far superior to 5 year prison terms (death penalty, life imprisonment, etc.). Applying section IV a of the Penal Code¹², is considered an act of terrorism or of corruption, acts targeting the security of the State, integrity of the jurisdiction, stability and normal functioning of institutions. However, this chapter also includes categories of general offences, which are far from being terrorist acts, such as damage to the environment (Article 87 bis of the Penal Code) and damage to the national economy (Article 65 of the Criminal Code). This definition of crimes against the security of the State is particularly dangerous in that it can cover many crimes, and can be used to silence any opposition to the government.

Finally, military tribunals do not offer any guarantee of a fair trial to either civilians or military. They are far from respecting the rights to a defence, including the ability to freely choose one's lawyer, as in the case of Bashir Belharchaoui. The latter was arrested on 18 August 2011 by officers from the Department of Intelligence and Security (DRS) and was incarcerated in a special DRS centre where he was tortured before being transferred to the military prison of Blida. He had no access to a lawyer and was unable to contact his family. Maitre Amine Sidhoum Belharchaoui, lawyer of the Belharchaoui family asked for the case to be transferred to a civilian court. The military tribunal in Blida put pressure on the family to change lawyer. The Blida military tribunal sentenced him in August 2011 to one year in prison.

1.2.2. Military officers as judiciary police

By applying Article 15 of the Criminal Procedure Code, military officers from the security services can act as judicial police officers. Consequently, and by also applying Article 28 of the Code, they may be required to implement all necessary measures to establish the crimes and offences against State security. According to Article 47 of the Criminal Procedure Code, judicial police officers may be impressionable, in the case of crimes described as acts of terrorism or corruption, of undertaking any kind of search or seizure «*day and night, and anywhere*»¹³.

¹¹ Committee for Human Rights, *General Observation No. 32 of 23 August 2007 (90th session) on the Right to Equality before Courts and Tribunals and to a Fair Trial (Article 14)*, 23 August 2007, CCPR/C/GC/32,

¹² Added under Ordinance No. 95-11 of 25 February 1995

¹³ Article 47 of the Code of Criminal Procedure amended by Law No. 06-22 of 20 December 2006 and completed

The absence of repeal of these provisions is indicative of the willingness of the Algerian authorities to prolong special measures that are particularly harmful to the respect for Human rights in peacetime. Indeed, these provisions provide military authorities with powers that allow them to be irrespective of the basic freedoms and violate Human rights with total impunity under the cover of law.

2. The new provisions adopted by the lifting of the state of emergency

2.1. Strengthening military power

Military power in the fight against terrorism and subversion has been strengthened following the formal lifting of the state of emergency. In this way, the Ministerial Decree of 2 May 2011¹⁴ defining the modalities of implementation of Ordinance No. 11-03¹⁵, states in Article 2 that «the ANP's Chief of Staff [is] in charge of commanding, conducting and coordinating the fight against terrorism and corruption». This measure is implemented in addition to other provisions integrated into the common law by the state of emergency. The Algerian authorities have put in place a system that allows the army to act freely and in peace in the fight against terrorism, creating a situation that is likely to lead to violations of Human rights. Finally, the legislation on the fight against terrorism and corruption often causes interference with the independence of the magistrates¹⁶. Indeed, the scope of the executive powers and the army in the fight against terrorism, allowed interference in legal cases¹⁷, which undermines the independence of the judiciary system guaranteed by Article 138 of the Constitution¹⁸ as well as by Article 26 of the CADHP and Article 14 of the IPCDCP.

by two paragraphs under Ordinance No. 95-10 of 25 February 1995: « *Lorsqu'il s'agit de crimes qualifiés d'actes terroristes ou subversifs, le juge d'instruction peut procéder ou faire procéder, par les officiers de police judiciaire compétents, à toutes perquisitions ou saisies, de jour comme de nuit, et en tout lieu sur toute l'étendue du territoire national* ».

¹⁴ Interministerial Decision of 2 May 2011 defining the conditions and modalities of implementation and commitment of the People's National Army in the fight against terrorism and corruption

¹⁵ Ordinance No. 11-03 of 23 February 2011 amending and complementing Law No. 91-23 of 6 December 1991 on the participation of the People's National Army missions to safeguard public order outside exceptional circumstances

¹⁶ Ordinance No. 95-11 of 25 February 1995 amending and supplementing Ordinance No. 66-156 of 8 June 1966 on the Penal Code

¹⁷ EMHRN, *The Independence and Impartiality of the Judiciary in Algeria*, October 2011; CFDA, *Alternative Report to the Committee on Human Rights, 90th session of the Human Rights Committee, Algeria report review, 23 July 2007, 2007*

¹⁸ Article 138 of the Constitution: «*The judiciary is independent. It is exercised within the framework of law*».

2.2. Integration of secret detention into the national law

The implementation measures of Ordinance No. 11-02¹⁹ amending Article 125 a 1 of the Code of Criminal Procedure authorises the «protected» secret residence for anyone accused of acts of terrorism or corruption for a maximum period of three months which may be renewed twice, and it criminalises the dissemination of information related to the location of the «protected» residence²⁰. Thus, it reflects the will of the Algerian authorities to put in place a legal arsenal limiting the rights of defence. This provision is particularly worrying because it is a first step towards the recognition of a routinely used practice by the Algerian authorities, consisting of the secret detention of persons suspected of crimes against the State's security, without being entitled to a lawyer²¹.

2.3. Adoption of new laws on political parties, associations and information

On 12 January 2012, three laws were passed as part of a big «reform» announced by the executive. This relates to the Organic Law No. 12-04 on political parties, the Organic Law No. 12-05 on information and finally the Law No. 12-06 on associations²². These laws do not satisfy the expectations of the civil society. Moreover, they do not predict any democratisation of the institutions or development of the society. On the contrary, they are draconian laws that increase the control of the administration of any independent space in the society. This «reform», so touted by the authorities and its related respective laws will be discussed in the forthcoming chapters²³.

¹⁹ Ordinance No. 11-02 of 23 February 2011 supplementing Ordinance No. 66-155 of 8 June 1966 on the Code of Criminal Procedures

²⁰ Article 125a 1, 9) of the Code of Criminal Procedures: «The control compels the defendant to defer, by decision of the examining magistrate, to one or more of the obligations resulting from the measures listed below: [...] 9) Stay in a safe house, set by the examining magistrate and do not leave without the authorisation of the latter. The examining magistrate gives police officers the responsibility to ensure the fulfilment of this obligation and ensure the protection of the accused. This measure is only ordered for offences classed as acts of terrorism or corruption and lasts for a maximum of three (3) months and may be extended two (2) times for a maximum of three (3) months each time. Anyone who reveals any information on the location of the safe house set by this measure incurs the penalty for disclosing this confidential instruction. The examining magistrate may, for good cause, add or modify any of the obligations listed above.»

²¹ Cf Chapter 3 on the judiciary system

²² CFDA, LADDH, EMHRN: «Political Reforms» or Additional Lock on Society and Politics in Algeria? A critical analysis, April 2012, p. 43-69

²³ Cf in particular Chapter 7 on Freedom of Assembly and Peaceful Demonstration, Chapter 8 on Freedom of Expression and Information and Chapter 9 on Freedom of Association and Trade Union Freedoms

3. Maintenance of practices applicable under the state of emergency

Despite the lifting of the state of emergency, demonstrations still remain banned, peaceful demonstrations and meetings are almost never allowed. Many demonstrations were repressed or denied. The ban on marches in Algiers, which was never published in the Official Journal, and which also has no legal basis and has been extended in an arbitrary way to the rest of the country, is still in place. Public events are sometimes tolerated but are never allowed and trade unionists are harassed²⁴. Immediately after the lifting of the state of emergency, the Minister of the Interior Daho Ould Kablia said: «*There are security considerations. Marches in Algiers risk causing disorder*»²⁵. The lifting of the state of emergency did not change the security measures. The army has the majority of powers that resulted from the state of emergency available to maintain the control of civilian power in the fight against terrorism. The legislation relating to information and associations remains an obstacle to the freedom of expression, of demonstration and peaceful assembly²⁶. And lastly, the many abuses of Human rights committed since the lifting of the state of emergency, justified by the Algerian authorities by the need to restore public order, show that they have no real intention to engage on the path of compliance with civil liberties²⁷.

²⁴ Joint press release from the CFDA, CIHRS, FIDH, LADDH, OBS, EMHRN, SNAPAP, *Le harcèlement de syndicalistes et l'interdiction de manifester se poursuivent en Algérie, malgré la levée de l'état d'urgence*, 1 March 2012, available on the CFDA website: www.algerie-disparus.org

²⁵ TADJER (R.), «New parties, locations of secret detention ... Ould Kablia retracts his statements,» TSA, 2 March 2011

²⁶ Cf in particular Chapter 7 on freedom of assembly and peaceful demonstration, Chapter 8 on freedom of expression and information and Chapter 9 on freedom of association and trade union freedoms

²⁷ REMHRN, *The lifting of the state of emergency: a cover up. The exercise of the freedoms of association, assembly and protests in Algeria*, January 2012

Chapter 2 - THE NATIONAL CONSULTATIVE COMMISSION FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS



The National Consultative Commission for the Protection and Promotion and of Human Rights (CNCPPDH) is the national institution of Human rights in Algeria. Founded in 2001 by a presidential decree²⁸, it replaced the National Observatory of Human Rights (NHRO) which was created in 1992.

The National Human Rights Institutions (NHRIs) are intended to *«promote and protect human rights and fundamental freedoms; reinforces participation and rule of law, in addition to make these rights and freedoms widely known and raise awareness»*.²⁹.

During the first international meeting of NHRIs held in Paris in October 1991, these institutions have developed «Guiding Principles relating to the Status of National Institutions», called «Paris Principles». They define the competencies, composition, operating procedures, criteria to guarantee the independence and pluralism of these institutions so that all NHRIs would be based on the same principles. They were taken over by the UN General Assembly and appended to resolution No. 48/134³⁰. Thus, their skills are the following:

- To provide advice, recommendations, reports on «all matters relating to the protection and promotion of Human rights» (Article 3-a);
- To promote and ensure the harmonisation of national laws and practices in relation to international Human rights (Article 3-b); to encourage the ratification of these instruments (article 3-c);
- To contribute to the reports submitted by the States to the UN bodies and committee (Article 3-d);
- To cooperate with international, regional and other national institutions (Article 3-e);
- To participate in teaching and research programs on Human rights (Article 3-f) and raise public awareness on Human rights (Article 3-g).

An International Coordinating Committee of National Institutions for the Promotion and Protection

²⁸ Decree No. 01-71 of 25 March 2001

²⁹ UN General Assembly, *Resolution 64/161. National Institutions for the Promotion and Protection of Human Rights*, 12 March 2010, A/RES/64/161, Preface

³⁰ UN General Assembly, *Resolution 48/134. National Institutions for the Promotion and Protection of Human Rights*, 4 March 1994, A/RES/48/134, Appendix

of Human Rights (ICC) was established in 1993. It is an institution incorporated under Swiss law, which collaborates with the United Nations

An accreditation process of NHRIs established in 1998 is supervised by the Sub Committee on Accreditation. There are six main criteria arising from the «Paris Principles» for accreditation: 1) a large mandate based on the universal standards of Human rights, 2) independence from the government, 3) an autonomy guaranteed by the Constitution or its statutes, 4) pluralism; 5) sufficient resources and 6) adequate investigative powers³¹.

If all these principles are followed, the NHRI gets the accreditation level «A» and then can fully participate in UN Human Rights Council's sessions. If it meets only parts of these criteria, it is classified at «B» level and can only attend Committee Meetings as an observer. It cannot vote. If the NHRI fails to comply with these principles, it gets the «C» status and has no rights before the ICC or the UN. In this case, it can only attend ICC meetings at the invitation from the chairman of the Bureau.

CNCPPDH had received accreditation level «A» in 2003. The credential committee then considered that CNCPPDH no longer met the «Paris Principles». The Associations for the Defence of Human Rights have never ceased to denounce this situation and the CNCPPDH was downgraded to Class «B»³² (1). Since then, it has been attempting to recover its status by inviting an ICC delegation to Algiers (2).

1. The loss of CNCPPDH's «A» accreditation

1.1. The institution's lack of independence and pluralism

In April 2008, the ICC's Sub Committee Accreditation sent a list of recommendations to the CNCPPDH to enable it to regain its «A» accreditation. The Commission was then given a year to comply with the «Paris Principles» on the following points: the submission of an annual activity report; to be established by a legislative or constitutional article; the implementation of a transparent appointment and dismissal process; and an effective cooperation with the United Nations Human rights protection system. In March 2009, only the 2007 Annual Report had been submitted to the Sub Committee³³. The CNCPPDH was downgraded to «B». Its accreditation

³¹ Cf website: http://nhri.ohchr.org/EN/AboutUs/ICCACCreditation/Pages/default.aspx#_ftn1

³² Committee on the Elimination of Racial Discrimination, *Concluding observations on the fifteenth to nineteenth periodic reports of Algeria*, 1 March 2013, CERD/C/DZA/CO/15-19, p. 5, § 20

³³ International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of

application was reviewed again in October 2010, but its status has still not been considered as compliant with the «Paris Principles»³⁴.

The CNCPPDH was established in 2001 by presidential decree and not by a constitutional or legislative article, as registered in «Paris Principles». Following the recommendations of the Sub Committee which advised Algeria of its intention to downgrade the CNCPPDH to grade «B» due to the absence of a constitutional or legal article governing the establishment of the Commission, Article No. 09-08 of 22 October 2009 on the establishment of the CNCPPDH was adopted. However, this law is a validation law of a previous order, Ordinance No. 09-04 of 29 August 2009 which is an executive action. Law No. 09-08 was therefore passed by the People' National Assembly (APN) without being discussed. Whereas the objective intended by this principle was to provide a high level of protection to the NHRI, it also allowed a debate at its creation. This was not the case in the Parliament or in the committee where the article was presented just two days before its adoption, or during the vote. This situation reflects the lack of interest paid by both the Executive and the Parliament to the human rights issue.

In addition, the law contains only five very general articles: Section 2 of Ordinance No. 09-04 states that the CNCPPDH is «independent»³⁵, without taking the trouble to define the guarantees of such independence. Article 5 refers to a presidential decree to clarify «the tasks, composition and terms of the members' appointment as well as the commission's operation». Therefore, the CNCPPDH's operation is established by a law from the Executive, namely the Presidential Decree No. 09-263 of 30 August 2009 which governs the tasks, operating procedures and appointment Commission members. A real structural independence vis-à-vis the Executive is not guaranteed.

This decree, contrary to the recommendations of the Sub Committee does not establish a transparent process of appointment and revocation. With the creation of the institution, the members of the Commission were appointed by the President of the Republic³⁶. They are now appointed by presidential decree³⁷. The change in terminology does not in any way alter the terms of the members' appointment. There is still no clear, transparent and participatory

Human Rights, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, March 2009, p. 8

³⁴ International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, April 2010, p. 10-11

³⁵ This adjective was not included in the decree of 2001

³⁶ Article 8 of Decree n°01-71 of 25 March 2011

³⁷ Article 4 of Decree n°09-263 of 30 August 2009

selection process, which calls into question the independence of the institution. It should be noted that in many countries, the appointment of NHRI members is made after consultation with representatives of the Legislative and Judiciary.

In conclusion, all the changes adopted and presented as reforms in line with the «Paris Principles» are merely ornamental changes.

Similarly, the reports of the CNCPPDH are for the President of the Republic and are not easily accessible to a wide audience. The Sub Committee on credentials lamented this situation in its report of March 2010³⁸, as well as the Human Rights Committee³⁹ and the Committee against Torture⁴⁰. The CNCPPDH considered these criticisms, and its annual and thematic reports are now available on its website. Even if the CFDA is very critical on the number of issues addressed by the CNCPPDH, starting with forced disappearances, it regrets that these reports are not widely circulated in hard copies to associations, unions and other civil society organisations, but also to the various state institutions, starting with security services. The CFDA said that the report on forced disappearances has never been made public while the law provides that the reports are made public two months after their transmission to the President of the Republic.

Finally, the Sub-Committee emphasized on the need for the CNCPPDH to cooperate with UN human rights mechanisms for the protection of human rights⁴¹ and the civil society⁴². The CNCPPDH interacts in a difficult way with the UN Human Rights system. For example, the Chairman of the Committee, Farouk Ksentini, reacted with violence following the 2007 recommendations of the United Nations Human Rights Committee that he described as «*high-speed fabrications (...) which fall within buffoonery*»⁴³ which are intended to «*undermine the reputation of Algeria*»⁴⁴. These statements, Farouk Ksentini, who is still chairman of the CNCPPDH, were in response to the Committee's recommendation to repeal certain provisions of Ordinance No. 06-01

³⁸ International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, April 2010, pp. 10-11

³⁹ Human Rights Committee, *Concluding Observations of Human Rights Committee, Algeria*, 12 December 2007, CCPR/C/DZA/CO/3, § 10

⁴⁰ *Committee against Torture, Concluding Observations of Committee against Torture, Algeria*, 16 May 2008, CAT/C/DZA/CO/8

⁴¹ International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, March 2009, p. 8

⁴² International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *Report and Recommendations of the Meeting of the Accreditation Subcommittee*, October 2010, p. 11

⁴³ DJAMEL (B.), «Farouk Ksentini: Il n'y a pas de prisons secrètes en Algérie», *Le Quotidien d'Oran*, November 4, 2007

⁴⁴ IYES (S.), «L'ONU enquête sur les prisons secrètes en Algérie», *TSA*, 7 September 2009

implementing the Charter for Peace and National Reconciliation.

The CNCPPDH's cooperation with Human rights NGOs is also very limited. The latter are never consulted by the CNCPPDH, have rarely met with either its members or even the president. The CNCPPDH, personified in its president, is quite distrustful of civil society and Human rights activists. It is in particularly insulting language that Mr. Ksentini spoke about the families of the disappeared who want to know the truth about the fate of their missing relatives, calling them «foreign bums»⁴⁵. He also supported the police's decision to ban the weekly peaceful gathering of families of the disappeared, even though the ban is flagrantly violating the provisions of the Constitution and the International Conventions ratified by Algeria⁴⁶. Farouk Ksentini defended his position by stating that «he was fed up of hearing families of the disappeared insulting the President from outside his window»...

It is the same with regard to international NGOs. The International Federation of Human Rights (FIDH), Human Rights Watch (HRW) and Amnesty International are not welcome in Algeria as it is regularly pointed out by Farouk Ksentini⁴⁷. The latter are not allowed to act in Algeria⁴⁸. For the President of the CNCPPDH, these NGOs must first apologise to the Algerian people and government⁴⁹, for having denounced Human rights violations committed during the 90s. Farouk Ksentini's hostility towards the FIDH is even stronger⁵⁰, an organisation which he considers as «Algeria's sworn enemy»⁵¹, and whose information contained in their reports on the Human rights situation is simply «false»! Similarly, on the occasion of the publication of HRW's 2012 report, Ksentini accused this NGO of overburdening Algeria «in revenge»⁵² after the Algerian government rejected its installation in Algeria. Far from denouncing the ban on HRW to work in Algeria, Mr. Ksentini, chairman of the CNCPPDH, only said that he is in favour of setting up HRW in the country so that it can «review its conclusions about the Human rights situation in the country»⁵³. Although the CNCPPDH Chairman constantly repeats that Algeria «has nothing to

⁴⁵ GUENANFA (H.), «Ksentini réplique aux familles des disparus, «Vous êtes des croupions de l'étranger», L'expression, 2 October 2010

⁴⁶ Cf Chapter 4 on Enforced Disappearances

⁴⁷ Aziza (M.), «Droits de l'Homme : Ksentini, les disparus et les ONG» Le Quotidien d'Oran, August 28, 2010

⁴⁸ Aziza (M.), «Droits de l'Homme : Ksentini, les disparus et les ONG» Le Quotidien d'Oran, August 28, 2010

⁴⁹ Aziza (M.), «Droits de l'Homme : Ksentini, les disparus et les ONG» Le Quotidien d'Oran, August 28, 2010

⁵⁰ The CFDA is a full member of the FIDH, with the Algerian League for the Defence of Human Rights (LADDH).

⁵¹ Farouk (B.), «Le rapport de la FIDH n'a aucune valeur», Le Temps d'Algérie, 15 September 2010

⁵² AOUDIA (K.), «Considérant le dernier rapport de l'ONG «sévère et exagéré», Farouk Ksentini : «HRW est en train de se venger de l'Algérie», Le Temps d'Algérie, 2 February 2013

⁵³ AOUDIA (K.), «Considérant le dernier rapport de l'ONG «sévère et exagéré», Farouk Ksentini : «HRW est en train de se venger de l'Algérie», Le Temps d'Algérie, 2 February 2013

hide»⁵⁴ on the subject of human rights, the sidelining of international organisations responsible for the protection of Human rights is systematic. This was confirmed by the rejection of the visit to Algeria of the UN Working Group on Enforced or Involuntary Disappearances in view of the conditions imposed by the government for its visit. The visit, announced on numerous occasions in the press⁵⁵ following the UN High Commissioner for Human Rights' first visit to the country, has in fact not yet happened⁵⁶.

Generally speaking, the CNCPPDH's chairman seems to confuse the promotion of Human rights with the promotion of the President of the Republic's policies, as evidenced by his frequent public statements contradicting the letter and spirit of Human rights. Unfortunately, the enforced disappearances case file illustrates this situation in an exaggerated way.

1.2. The CNCPPDH and the missing persons' case files

CNCPPDH was awarded, through the Presidential Decree No. 03-299 of 11 September 2003, a «specific and temporary mission of handling applications aiming to search for any person reported missing by a family member»⁵⁷. This ad hoc mandate, whose mandate ended in late March 2005, collected information on the disappeared based on questionnaires completed by the missing's families, and prepared a report to give to the President of the Republic, but this report was never made public. However, at the end of the ad hoc mandate's term, Farouk Ksentini, simply stated to the press that 6146 cases of disappearances had been recorded, sometimes by state officials, sometimes by agents independent of the State who acted individually. Despite this observation, we were «not to expect the state to organise its own trial»⁵⁸. The CNCPPDH's chairman in charge of the Human rights, therefore, sided with the impunity, the agents of a State that he acknowledges as being responsible for these abuses. He then supported the impunity established by the Charter for Peace and National Reconciliation and he today still states that he supports a general amnesty.

The ICC Accreditation Sub Committee has requested detailed information on the background work done by the CNCPPDH regarding the violations of Human rights, especially following the

⁵⁴ AOUDIA (K.), «Considérant le dernier rapport de l'ONG «sévère et exagéré», Farouk Ksentini : «HRW est en train de se venger de l'Algérie», Le Temps d'Algérie, 2 February 2013

⁵⁵ GUENANFA (H.), «Un groupe de travail sur les disparitions forcées bientôt en Algérie», TSA, 17 September 2012

⁵⁶ Working Group on Enforced and Involuntary Disappearances, *Report of the Working Group on Enforced or Involuntary Disappearances*, 28 January 2013, A/HRC/22/45, p. 26

⁵⁷ Article 7a of Presidential Decree No. 03-299

⁵⁸ GARCON (J.), En Algérie, «Bouteflika veut amnistier la sale guerre», Libération, 12 April 2005

enforced disappearances in the 1990s. However, since the adoption of the Charter in 2005, the CNCPPDH considers that all problems related to this issue have been resolved, as it is recalled in its 2007 annual report⁵⁹. However, the provisions of this Charter bestow impunity, by establishing immunity against any judiciary prosecution⁶⁰. This goes against all principles for the establishment of truth and justice for the victims' families⁶¹.

In this context, the CNCPPDH's chairman states that «CNCPPDH is not required to handle the issue in question and if it did it, it is only for humanitarian reasons»⁶². However, by endorsing the ban on the weekly demonstrations against the families of the disappeared near the CNCPPDH premises and denying any meeting with them, the «humanitarian considerations» of Farouk Ksentini seem somewhat limited.

The apparent change of tone that marked the CNCPPDH's chairman call to the Algerian government to open a dialogue with the families of the missing on the occasion of the release of the CNCPPDH's 2011 report⁶³ has however not resulted in any significant change in the attitude of either the government or the CNCPPDH. No further investigation was conducted on cases of enforced disappearance, a ban remains on the prosecution of State's agents, and the CNCPPDH chairman has still not met with the families of the disappeared. In contradiction to previous statements, the CNCPPDH's chairman has also told the press in February 2013 that «it is not the State who is behind this state of affairs» but «the terror imposed by terrorism»⁶⁴. While he previously recognized the responsibility of agents of the Algerian State in 6,146 cases of enforced disappearances, Mr. Ksentini now considers that the «rare cases [attributed to state agents] are the work of zealous officers or panicked soldiers»⁶⁵. The CNCPPDH therefore does not play an advisory role for the promotion and protection of Human rights but rather, via the voice of its chairman, acts as the authorities' spokesperson in defending the Charter for Peace and National Reconciliation, a document that violates the Algerian Constitution itself and the ICCPR.

⁵⁹ The CNCPPDH Annual Report, 2007, *State of Human Rights in Algeria*, 2007, p. 23-40

⁶⁰ Article 45 of Ordinance No. 06-01 of 27 February 2006 on the implementation of the Charter for Peace and National Reconciliation

⁶¹ CFDA press release, *The families of missing acknowledge calling CNCPPDH addressed to the Algerian authorities to establish a dialogue*, 28 August 2012, available on the website of the CFDA: www.algerie-disparus.org

⁶² BOUARICHA (N.), « Le dossier des disparus hypothéqué », *El Watan*, 28 August 2010

⁶³ CNCPPDH Annual Report: Call for a « real and effective translation «of human rights,» *El Moujahid*, 25 August 2012

⁶⁴ MOULOUDJ (M.), « Me Farouk Ksentini s'exprime sur les réformes, la Justice et les droits de l'Homme : « L'armée doit protéger la Constitution », *Liberté*, 12 February 2013

⁶⁵ MOULOUDJ (M.), « Me Farouk Ksentini s'exprime sur les réformes, la Justice et les droits de l'Homme : « L'armée doit protéger la Constitution », *Liberté*, 12 February 2013

Given these elements, the ICC Accreditation Sub Committee has asked to confirm the Commission's «B Status» and urged it not to submit its application for re-accreditation «until the above mentioned problems have been addressed.» The need to strengthen the CNCPPDH to be consistent with the «Paris Principles» was also mentioned by the Economic, Social and Cultural Rights Committee⁶⁶ during its session in 2010.

2. An attempt to «trick» the ICC during the visit of a delegation to Algiers

The CNCPPDH invited an ICC delegation who came to Algiers from 13 to 16 September 2011. The goal, according to Farouk Ksentini, was to «get things straight»⁶⁷ with the ICC and to assure the Sub Committee that the CNCPPDH was compliant with the «Paris Principles». So, its chairman took the opportunity to explain to the delegation «the Commission's operational mechanisms [...] [and to insist] on its independent character»⁶⁸. Such a talk cannot, however, conceal the CNCPPDH's structural problems. During this visit, Farouk Ksentini expressed his desire to «give the delegation, an image that reflects the reality of Human rights in Algeria»⁶⁹. Thus, to ensure that the «reality» presented to the delegation was the official position of the government, ICC members were able to meet with several Algerian senior officials, whereas contact with the independent civil society was very limited. Only one meeting was scheduled with members of the independent civil society. The Algerian League for the Defence of Human Rights (LADDH) was invited but it declined the invitation⁷⁰, to mark its lack of confidence in the CNCPPDH and criticised its positions with regards to the treatment of the problem of the disappeared.

However, no meeting with the families of the disappeared had been planned. SOS Disappeared and CFDA were not invited to the consultation meeting with the civil society. On Wednesday 14 September, the families of the disappeared held their weekly meeting near the CNCPPDH offices⁷¹. At the arrival of the delegation procession on their way to the CNCPPDH headquarters,

⁶⁶ Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights, Algeria*, 7 June 2010, E/C.12/DZA/CO/4, § 6

⁶⁷ «M. Ksentini reçoit une délégation du Comité des institutions des droits de l'homme», Algeria Press Service, 13 September 2011

⁶⁸ «M. Ksentini reçoit une délégation du Comité des institutions des droits de l'homme», Algeria Press Service, 13 September 2011

⁶⁹ «M. Ksentini reçoit une délégation du Comité des institutions des droits de l'homme», Algeria Press Service, 13 September 2011

⁷⁰ BOUCHACHI (M.), *Visite de la délégation du CI-CINDH : la LADDH décline l'invitation de la CNCPPDH*, 14 September 2011, available on the website of the Algerian League for the Defence of Human Rights: <http://www.la-laddh.org>

⁷¹ Since they were banned from demonstrations in front of the CNCPPDH headquarters, the families of the disappeared

the families entered the premises noisily in order to call out to the members of the ICC. These latter listened to them and were sensitive to the problems of these families and the CNCPPDH's partiality in the treatment of this issue.

hold their demonstrations on the sidewalk of a close road. See CFDA press release, *Les familles de disparus interpellent la délégation du CIC de l'ONU lors de leur rassemblement hebdomadaire*, 15 September 2011, available on the CFDA the website: www.algerie-disparus.org

Chapter 3 - THE JUDICIARY SYSTEM



The Constitution of 22 February 1996⁷², currently in effect, defines the judiciary as independent in its Article 138. According to Article 26 of the African Charter on Human and Peoples' Rights, «The State Parties [...] have the duty to guarantee the independence of the Courts and to allow the establishment and improvement of appropriate national institutions responsible for the promotion and protection of the rights and freedoms guaranteed by the present Charter.»

⁷² Amended by Act No. 08-19 of 15 November 2008 revising the Constitution

Moreover, Article 140 of the Constitution states that: «Justice is founded on the principles of legality and equality. It is equal for all, accessible to all and is expressed by the rule of law.» At an international level, the right to a fair trial, including the right to an independent and impartial tribunal, is guaranteed by Article 14 of the ICCPR⁷³, and Article 7 of the ACHPR⁷⁴, treaties for the protection of Human rights, ratified by Algeria.

However, despite these constitutional guarantee⁷⁵ and international treaties ratified by Algeria, many violations are still being committed in Algeria. The judiciary system has many structural problems (1) and justice is being used by the authorities as a means of repressing freedoms (2).

1. Structural problems

1.1. The magistrate

1.1.1. The magistrate's lack of independence and impartiality

The Constitution explicitly enshrines the independence and impartiality of the magistrate. Under Article 147 of the Constitution: «The judge only obeys the law». So, protecting the judge «against any form of pressure, interventions or operations likely to negatively affect the performance of his mission or the respect of his free will,» Article 148 of the Constitution aims to ensure the judge's independence. Its goal is to protect them against external interventions of political, civil and military powers as well as to protect them from any act of corruption⁷⁶. The defendant is additionally protected «from any abuse or deviation from the judge»⁷⁷ and «the right to defence

⁷³ Article 14 § 1 of the ICCPR: «All persons shall be equal before the courts and tribunals. Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal. [...]»

⁷⁴ Article 7 § 1 of the ACHPR: «Every individual shall have the right to have his cause heard. This comprises:

- a) The right to an appeal to competent national organs [...]
- b) The right to be presumed innocent [...]
- c) The right to defence [...]
- d) The right to be tried within a reasonable time by an impartial court or tribunal»

⁷⁵ Chapter III: From judiciary system, from the Algerian Constitution of 22 February 1996, Articles 138-158

⁷⁶ REMDH, *L'indépendance et l'impartialité du système judiciaire en Algérie*, octobre 2011, p. 12

⁷⁷ Article 150 of the Constitution

is recognised»⁷⁸, which should ensure compliance with the principle of impartiality on behalf of the judge and prevent that the latter places himself above the law or makes arbitrary decisions. Finally, the responsibility of the magistrate may be brought before the High Judicial Council (CSM)⁷⁹ or the tribunals.

However, if the independence and impartiality of judges is guaranteed by the Constitution, these were breached by the Organic Law No. 04-11 of 6 September 2004 on the judiciary status. Indeed, the provisions regarding the appointment of magistrates do not guarantee their independence or impartiality. Article 78 § 7 of the Constitution stipulates that the President of the Republic «appoints magistrates». As for Article 59, it states that «any judge promoted to a function is obliged to accept it». Therefore, this article may oblige a judge to relinquish a case «against his will in order not to disobey his obligation to accept any office to which he is promoted»⁸⁰.

It is notably through the CSM organisation and the magistrates succumbing to the pressures and orders of influential people that their lack of independence and impartiality is the most significant.

1.1.1.1. The organisation of the High Judicial Council

Article 49 of Law No. 04-11 of 6 September 2004 on the status of the judiciary provides that the highest specific judiciary functions are provided by «presidential decree» without the President of the Republic being required to consult the CSM. Other specific judiciary functions are provided under Article 50, after consultation with the CSM, without specifying whether the opinion of the CSM must be followed or not.

In March 2013, some magistrates, in particular Djamel Aidouni, president of the National Magistrates Union (SNM) initiated the debate on the judiciary independence⁸¹. Regional meetings were held to collect the magistrates' requests and send them to the Minister of Justice. The SNM requested that the separation of the executive power from the SCM be assured during the next constitutional amendment. The proposal includes the fact that CSM's vice president is the first president of the Supreme Court, while today the vice-presidency is assured by the

⁷⁸ Article 151 of the Constitution

⁷⁹ Article 149 of the Constitution

⁸⁰ CFDA *Alternative Report to the Committee on Human Rights, 90th session of the Human Rights Committee, examination of Algeria report on 23 July 2007, 2007*, p. 39

⁸¹ HAMMADI (N.), «Indépendance de la justice. Les magistrats lancent le débat.», *Liberté*, 11 March 2013

Minister of Justice. The proposal also included that all the magistrates sitting in the CSM must be elected. Under Article 3 of the Organic Law No. 04-12, the CSM is chaired by the Head of State. It automatically includes the Minister of Justice, who is its Vice President, the first president of the Supreme Court and the Attorney General of the Supreme Court. The CSM also includes ten elected magistrates and six persons appointed by the President of the Republic. While in theory some rules of independence and impartiality are more or less guaranteed, magistrates are actually subject to the orders of «high ranking» officials. The judiciary system operates according to the rules of authority, interest and opportunity.

1.1.1.2. *The Magistrates' Submissiveness*

Bakhtaoui Mohamed, former President of Es Senia Court (Oran Province) confirms having regularly seen «judges [...] [leaving] their offices with bags of money»⁸². He cites the example of the former Minister of Justice, Tayeb Belaïz (2003-2012) who, allegedly, interceded in person in a drug case which first came under the court of Ain Témouchent, then in appeal under the court of Sidi Bel Abbes. The latter had sentenced the defendants to five years in prison but the minister brought the judges, by night and escorted by police, to the court and ordered them to change the verdict. The bench delivered a simple suspended sentence.

Another example is the Khalifa trial⁸³. According to Arezki Aït Larbi, journalist and co-founder of the Algerian League for the Defence of Human Rights (LADDH) in the 80's, the criminal court «cleaned up» the case files of important figures, «senior officers of the army, police officers, DRS members, the judiciary, the president's brother, Abdelghani Bouteflika, the Khalifa group legal advisor, all of whom were mentioned in the judiciary inquiry, and who have not been called to the bar»⁸⁴. It is not uncommon for cases involving public figures to be suppressed. Despite the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 12 September 1989 by Algeria, the prosecutors have systematically refused to accept complaints against agents of the Department of Intelligence and Security (DRS) even when it involves cases of torture and arbitrary detention. In this matter, Algeria does not take into account the recommendation made by the Committee against Torture which says that the authorities must «launch (...) investigations spontaneously and systematically wherever

⁸² AZIRI (M.), «La « justice » dans tous ses états !», *El Watan*, 11 April 2013

⁸³ Rafik Khalifa is an Algerian businessman. His group «El Khalifa Bank», «Khalifa Airways», «Khalifa rent a car», «Khalifa TV» and «K-News» went bankrupt in 2003. He was sentenced in 2007 to life imprisonment for criminal conspiracy, aggravated theft – he was particularly accused of squandering the money of the president's relatives – embezzlement and forgery and use of forgery. See El Kadi's article (l.), «Procès Khalifa», *El Watan*, 15 January 2007

⁸⁴ AZIRI (M.), «La « justice » dans tous ses états!», *El Watan*, 11 April 2013

there is reasonable ground to believe that an act of torture has been committed, including in the event of the death of a detainee [and] (...) ensure that the results of the investigation are communicated to the families of the victims»⁸⁵. Since this recommendation was made, nothing has changed for the positive. Thus, the Committee against Torture has admitted that Algeria is «guilty of torturing Mr. Hanafi to death»⁸⁶ and has violated Articles 1, 2 § 1, 11, 12, 13 and 14 of the Convention against torture. The judiciary system's structural problems do not only concern the lack of independence and impartiality of the magistrates, but also the lack of quality of justice.

1.1.2. The lack of judiciary quality

Algerian judiciary is often hasty; trials are botched by magistrates who fail to check the procedures, witness testimonies and expert reports. A trial involving punishable acts of a twenty year prison sentence may come to an end within two hours. This is due to the fact that magistrates are threatened by the Ministry of Justice investigating who requires figures. It is therefore a judiciary of quantity rather than of quality. It is «a mass production» judiciary that affects the rights of complainants. It is indisputable that the quality of the judiciary begins with the independence of the judiciary, but also the training of magistrates. Indeed, magistrates do not receive consistent education on Human rights, in neither theory nor practice. Moreover, the training in international law is scarce, if not nonexistent. This observation raises the question «whether the virtual absence of human rights in a magistrate's training does not indicate the State's unwillingness to implement the ratified conventions»⁸⁷.

While Algeria is a party to many international instruments, magistrates who should be responsible for these almost never use international Human rights conventions. The Algerian judiciary still does not implement Article 132 of the 1996 Constitution which states that «treaties ratified by the President of the Republic, as provided by the Constitution, are above the law». According to the interpretation of this provision⁸⁸ par le Conseil constitutionnel dans une décision fondatrice de 1989⁸⁹, international and regional treaties for the protection of Human rights, such as the ICCPR and the ACHPR can be directly invoked by Algerian citizens before the national courts

⁸⁵ Committee against Torture, *Concluding Observations of the Committee against Torture, Algeria*, 16 May 2008, CAT/C/DZA/CO/3, § 14

⁸⁶ Committee against Torture, Communication No. 341/2008, *Hanafi against Algeria*, 3 June 2011

⁸⁷ EMHRN, *The Independence and Impartiality of the Judiciary in Algeria*, October 2011, p. 23

⁸⁸ This related to Article 123 of the 1989 Constitution drafted in exactly the same terms as Article 132 of the 1996 Constitution which currently in force.

⁸⁹ Decision No. 1 CC-DL-89 of 20 August 1989 on the Electoral Code. Available on the website of the Constitutional Council: www.conseil.constitutionnel.dz

which have the duty to uphold the provisions of these treaties above the provisions of internal law with legislative value or infra-legislative value in case of contradiction⁹⁰. Nevertheless, court decisions applying the superiority of Human rights treaties ratified by Algeria on legislative laws are exceptional. Indeed, a large majority of judges consider the use of international conventions protecting Human rights as a political act reserved for the executive and legislative domains, away from any judiciary examination. This reasoning illustrates to what extent the «*independence of the judiciary*» proclaimed by the Constitution is nonexistent, starting with an independent spirit.

Finally, decisions are often poorly justified and are made on the wrong legal basis. The example of Abdelkader Kherba is significant. Following his arrest in March 2012 while participating in a peaceful rally of clerks on strike, he received a year suspended sentence and a 20,000 dinars fine on 3 May 2012 by the court of Sidi M'Hamed, for «direct provocation of an unarmed crowd» (Article 100 of the Penal Code), «*obstructing the freedom to work*» (Articles 34 to 37 of Law 90-02) and «usurpation in function» (Article 242 of the Penal Code). In addition to the incorrect reference to Articles 55 and 56 of Law No. 90-02 in reference to the interference with the freedom of work, the formal judgment of the court of Sidi M'Hamed cited Article 342 of the Penal Code related to incitement of minors to debauchery⁹¹ and therefore had nothing to do with the charge⁹².

Problems amongst the magistrate are not the only piece of evidence of the failure of the judiciary system; the profession of lawyer is also at risk.

1.2. The legal profession in jeopardy

1.2.1. *The deterioration of lawyers' working conditions*

If magistrates do not receive full and adequate training in international law and Human rights,

⁹⁰ Ordinance No. 06-01 of 27 February 2006 contains numerous provisions, including Articles 45 and 46, contrary to the obligations under Algeria's ratification of the ICCPR.

⁹¹ Article 342 of the Penal Code: «Whoever incites, promotes or facilitates the debauchery or corruption of minors under the age of 19, of either gender, or even occasionally, under the age of sixteen, is punished by imprisonment of five (5) to ten (10) years and a fine of five hundred (500) to twenty-five thousand (25 000) dinars. Attempted offenses under this article are liable to the penalties for these offenses».

⁹² RADDH, *Request for urgent intervention in favour of Abdelkader Kherba*, 6 July 2012, an urgent appeal sent to the Special Rapporteur on the right to peaceful assembly and association, the Special Rapporteur on the situation of the defence of human rights, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, to the ACHPR president, to the Special Rapporteur on freedom of expression and access to information in Africa, available at: www.algerie-disparus.org

then neither do the lawyers. In this sense, they almost never resort to international instruments in their arguments and therefore they never evoke their violations. In addition, lawyers are subject to daily humiliation from the magistrate and are denied their right to litigate certain cases. In fact, judges often prohibit young lawyers from asking questions or intervening in court on matters regarded as «*political*», which undeniably violates the right to a fair trial. Indeed, according to the testimony of lawyers working with the CFDA, judges prevent lawyers from continuing their argument when they invoke international treaties and Human rights against police officers for example. The magistrates then ask the lawyers to limit their intervention on just the material and moral aspect of the offence, without interfering with what they consider as related to «*politics*».

A recent case has underlined the worrying situation of the defence rights. On 18 April 2013, the trial of Mr. Benabid, a notary, was held in which he was prosecuted by Algiers' criminal court for forgery and use of falsified documents. According to lawyers who attended the hearing, the judge, Mr. Hellali, also chairman of Algiers magistrates' local union, reportedly said twice that the bank's status, the focus of the proceedings, was a false document. Mr. Sellini, barrister representing the defence then asked the clerk to take note of these statements implying that the defendant was guilty even before the parties could speak, violating the right to the presumption of innocence. The judge refused, saying that he was properly conducting the hearing. The lawyer insisted and requested that the judge give him a notice about what he had said, and the judge replied: «*Judiciary is mine and I can do what I want with it*»⁹³. The Algiers Bar Association met the day after the incident and decided to strike and hold an extraordinary general meeting on 24 April 2013. However, this meeting was prevented due to the absence of a «*duly signed authorisation*» from the city hall and has been postponed until 11 May 2013⁹⁴. On 21 April, lawyers boycotted all hearings on the agenda of Algiers court while the magistrates observed a two-hour work stoppage. In a public statement, the Algiers Bar Association explained its call for a one-day strike by «*the continuous degradation and dangerous working conditions of lawyers*»⁹⁵.

Moreover, the example of Youcef Benbrahim, Vice President of the Algerian branch of Amnesty International and trainee lawyer in Sidi Bel Abbes, shows that the profession of lawyer is not respected by the legal body. At the end of September 2012, Youcef Benbrahim was suspended de facto by the barrister of Sidi Bel Abbes. This suspension prevented him from attending training

⁹³ TLEMCANI (S.), «*Avocats-magistrats : le conflit dégénère*», *El Watan*, 22 April 2013

⁹⁴ A.B., «*Bras de fer entre les avocats et les juges. Le barreau d'Alger remporte son AG*», *Le soir d'Algérie*, 25 April 2013

⁹⁵ H.Y., «*Pour dénoncer les violations des droits de la défense : grève d'une journée du bâtonnat d'Alger*», *La Tribune d'Algérie*, 22 April 2013

conferences whereas his presence was mandatory to validate his internship. He only received his suspension verbally. In an interview with a journalist from El Watan newspaper, the barrister of Sidi Bel Abbes said the suspension was due to the Youcef Benbrahim's «religious beliefs» who had refused to participate in a protest against the American film offending the prophet, «Innocence of Muslims,» a demonstration in lieu of a conference internship at the court of Sidi Bel Abbes on 27 September 2012⁹⁶. Faced with the mobilisation of Human rights activists and the media coverage of the case, the suspension was lifted in December 2012.

1.2.2. A draft law on the organisation of the profession of lawyers in conflict with the defence rights

The draft law on the organisation of the profession of lawyers has been submitted to the People's National Assembly by the former Minister of Justice Tayeb Belaïz in 2012. It provoked a strong protest from lawyers who concluded that the majority of the articles violated defence rights. To protest against this draft law, the Algerian Bar Association (UNBA) decided on 17 November 2012 to boycott all proceedings all over the country from 2 to 6 December 2012 as well as the official opening of the judiciary year 2012-2013. The new Minister of Justice, Mohamed Charfi, then engaged in a dialogue with the lawyers' representatives. The first meetings were held on 28 November and 15 December 2012 and led to the draft law being amended.

A working group composed of members of the People's National Assembly commission responsible for legal, administrative and freedoms affairs and fifteen presidents of the bar on behalf of UNBA, were made responsible for clarifying the first draft submitted to the People's National Assembly. Amendments were then proposed. On 25 March 2013⁹⁷, the fifteen presidents of the bar defended the thirty-one amendments to the draft bill. Among them, many related to the founding of the lawyer profession in addition to the defence rights. Articles 9 and 24 of the draft law sparked strong protests and were considered «a denial of the independence of the defence and the rights of the defendants»⁹⁸. According to Article 9, «the lawyer shall be liable for any hindrance he causes during the normal course of the administration of justice»⁹⁹. As a result, the lawyer is unable to leave the hearing in case of violation of the rights of defence.

⁹⁶ CFDA press release, LADDH, EMHRN, SNAPAP, and SOS-Disparus, Algeria: A young trainee lawyer suffers intimidation because of his activism in favour of human rights, available on the CFDA website: www.algerie-disparus.org

⁹⁷ TLEMCANI (S.), «Les bâtonniers plaident les droits de la défense à l'APN», *El Watan*, 26 March 2013

⁹⁸ HOUARIA (A.), «Le ministre de la justice et les représentants des barreaux à l'APN : Droits et devoirs de la défense», *El moudjahid*, 26 March 2013

⁹⁹ Draft law on the organisation of the lawyer profession. Accessed on 25 April 2013 on: <http://arezkiderguinidepute.wordpress.com/2013/04/10/projet-de-loi-portant-organisation-de-la-profession-davocat/>

In the new version, the presidents of the bar propose to amend this section through «*the right to protest or boycott the hearing*»¹⁰⁰.

Article 24 of the draft law provided in its previous version that «when a lawyer commits an offence in court, the judge makes a report drawn by the clerk that is transmitted to the President of the Court. The lawyer withdraws from the hearing [...]the lawyer will no longer be allowed to appear before the judge presiding over the hearing from the day of the incident until the president of the bar passes sentence on the matter brought to court by the President of the Court». The lawyer may therefore, according to this article, be temporarily suspended before any disciplinary action is taken against him. In the new project, offences in court must be resolved amicably and fall under the responsibility of the president of the bar and the president of the court. The new draft is currently being discussed by the People's National Assembly's Legal Affairs Commission. The affair, still not closed of the draft law which restricts the rights of the defence, shows the extent to which the authoritarian management has become the rule in all areas, including in the legal domain, an area which supposedly protects law and rights. In addition to the lack of independence and impartiality of the judiciary, it is used to repress freedoms.

2. The use of justice as a means of repressing freedoms

2.1. Arbitrary detention and torture

Article 9 of the UDHR¹⁰¹, Article 9 of the ICCPR¹⁰² and Article 6 of the ACHPR¹⁰³ prohibit the arbitrary deprivation of freedoms.

Nowhere in the internal law does it clearly state that any statement made as a result of torture is inadmissible if invoked as evidence in any proceedings, in accordance with Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment. Yet, the Committee against Torture has recommended to Algeria to «*revise its Code of Criminal Procedure so that it fully complies with Article 15 of the Convention*» in its concluding observations

¹⁰⁰ TLEMCANI (S.), «Les bâtonniers plaident les droits de la défense à l'APN», *El Watan*, 26 March 2013

¹⁰¹ Article 9 of the UDHR: «No one shall be subject to arbitrary arrest, detention or exile»

¹⁰² Article 9 § 1 of the ICCPR: «Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention [...]»

¹⁰³ Article 6 of the ACHPR: «Everyone has the right to liberty and security of person. No one shall be deprived of his freedom except for reasons and conditions previously set by law, in particular no one may be arbitrarily arrested or detained»

of 2008. However, no changes have been made. Moreover, Article 213 of the Code of Criminal Procedure which states that «the confession, as any evidence, is left to the discretion of the judge» violates Article 15 of the Convention against Torture with regards to information from «confessions obtained as a result of torture have been admitted in legal proceedings»¹⁰⁴. This practice shows that Algerians are still victims of arbitrary and secret detention as well as torture.

On 9 January 2011, El Hashemi Boukhalfa, 40, was arrested at his home in Ouargla, at 10:00 am by six plainclothes officers. They took him by force in their vehicle. The men introduced themselves as DRS (Department of Intelligence and Security) agents. They told him he was arrested for terrorism and murder. El Hashemi Boukhalfa was arbitrarily detained for eight days in DRS' military barracks in the neighbourhood of Tazegart, in Ouargla. During his detention, he was tortured: thrown from the top of a staircase, undressed by force, forced to eat human faeces¹⁰⁵. His torturers tortured him openly. Upon his release, he filed a complaint with the Attorney General and the Ministry of Justice. The Ouargla prosecutor refused to take his complaint and advised him to forget everything. Following his unsuccessful efforts in his county, El Hashemi Boukhalfa filed an individual complaint against the Algerian government before the Committee against Torture¹⁰⁶.

Abdelkader Hamdaoui¹⁰⁷, 24, was arrested on 27 September 2011 at around 3:00 pm at his grandmother's home, in Rouissat (in the Ouargla province). Plainclothes officers arrived in three white unmarked vehicles and introduced themselves as policemen. They took Abdelkader Hamdaoui away without any explanation. His parents went immediately to the police and the gendarmerie stations. They were told they had no information. They then went to the Court of Ouargla where the prosecutor told them that their son had been transferred to the Court of Cheraga in the province of Algiers. Contacted on 16 October, the court's public prosecutor denied having any information about this case. Meanwhile, Abdelkader Hamdaoui was in custody and placed in Serkadji prison in Algiers from 9 October 2011 after a period of twelve days detention during which he was held in isolation. On 12 November 2011, Abdelkader Hamdaoui was located at Serkadji prison and lawyer Mr. Amine Sidhoum was informed.

¹⁰⁴ The Committee against Torture, Concluding Observations of the Committee against Torture, Algeria, 16 May 2008, CAT/C/DZA/CO/3, § 18

¹⁰⁵ His testimony «Torturer pour une 406, au nom de la lutte anti-terroriste!» is available at: <http://www.youtube.com/watch?v=MEBMw1u9CQE>

¹⁰⁶ Alkarama press release, *Le comité des droits de l'homme saisi du crime de torture commis contre M. Hachemi Boukhalfa*, 24 February 2012, available at: www.alkarama.org

¹⁰⁷ Alkarama press release, *Abdelkader Hamdaoui, victime de disparition forcée depuis le 27 septembre 2011*, 12 November 2011. Available at: www.alkarama.org

In January 2012, Nafir Mohamed went to the gendarmerie station in the municipality of Oued El Aneb (the Annaba province) to take a meal to a friend who was being held there. The section leader chased him from the station. The following day, on 8 January 2012, Nafir Mohamed returned to the brigade to complain to the battalion commander, but the latter refused to meet him. He was then arrested, handcuffed, insulted and beaten by the Chief of Brigade. The Chief of Brigade with the help of two others then dragged him on gravel before being taken to Bouzaaroura prison. Arriving with blood on his face, the prison director had him taken to the health unit. On 9 January, his condition was so severe that he had to be urgently taken to the University Hospital Centre Ibn Rushd in Annaba. On 11 January, he underwent surgery for internal bleeding. He was released from the hospital on 15 January 2012 and was taken back to the prison's health unit. He was released on 18 January without even knowing the reason for his initial arrest. The Chief of Brigade and another military officer then tried to intimidate him by parking cars near his house. This led Mohamed Nafir to decide to file a complaint against Oued El Aneb's brigade. His medical records mysteriously disappeared and two weeks before the trial, he was arrested and convicted for drug possession.

Saber Saidi, 30, militant activist on social networks. He was arrested by the Department of Intelligence and Security on 11 July 2012 at around noon in his neighbourhood of Bordj El Kiffane (in the Algiers province). He was arrested for calling for a peaceful change of government in Algeria and posting videos of the Arab Spring on the internet. After eleven days of secret detention, without being able to inform his family of his condition or whereabouts or consult a lawyer, Saber Saidi was finally presented to the Prosecutor of the Republic of El Harrach (in the Algiers province) even though Article 51 of the Code of Criminal Procedure sets a deadline of 48 hours in custody. This period of 48 hours may be extended to a maximum of twelve days for terrorism cases, provided that they obtain written authorisation from the prosecutor. Saber Saidi was charged with «glorification of terrorism» (Article 87a of the Penal Code). The UN's Working Group on Arbitrary Detention condemned this arbitrary arrest and violation of Article 19 of the ICCPR¹⁰⁸ dedicated to the freedom of expression in this case¹⁰⁹. Thanks to the civil society's rallying, the Algiers criminal court finally released him on 9 April 2013.

On 1 October 2012, at 9:45 am, Yacine Zaid, a unionist and Human rights activist, who was travelling by bus with Abdelmalek Aibek El Sahli, representative of the hotels and restaurants

¹⁰⁸ Article 19 § 1 of the ICCPR: «Everyone shall have the right to hold opinions without interference.» Article 19 § 2 of the Covenant: «Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.»

¹⁰⁹ Working Group on Arbitrary Detention, Opinion No. 49/2012, A A/HRC/WGAD/2012/49

trade union, was arrested by police between Ouargla and Hassi Messaoud. After an identity check, Yacine Zaid was taken to the police station where he was questioned for two hours and received severe blows to the face and neck by three policemen. Two plainclothes officers presented themselves and took him away in a white Nissan brand car which had no registration number. Abdelmalek Aibek El Sahli, witnessed both the arbitrary arrest and beatings. He was released by the police without being informed about the destination of the white car. The following morning, Yacine Zaid was presented to Ouargla's prosecutor. He was sentenced on 8 October to a six-month suspended jail sentence and a 10,000 dinars fine for insulting a policeman.

Iskander Debbache, former soldier, journalist and Human rights activist, decided to return to Algeria after twenty years of exile. Upon his arrival at Algiers airport on 9 January 2013, he was arrested by border police, before being delivered, blindfolded, to the Department of Intelligence and Security¹¹⁰. Held in a secret location for four days without being able to communicate with his family, or benefit from the assistance of a lawyer, Iskander Debbache was released on Saturday 12 January and did not want to disclose the details and conditions of his detention¹¹¹.

Nasreddine Rarrbo, 25, activist in the Youth Movement of 8 May 1945, which denounced corruption and called for the establishment of a democratic regime in Algeria, was arrested on 5 February 2013¹¹². Plainclothes agents and policemen arrived at his house at Larbaa (in the Blida province) at around 4 pm. After searching his home without giving any explanation, they took him to the police station. After beating him, the officers, stripped him and tied him up in the police station yard, where he remained for several hours. The officers also inflicted «falaqa», a type of foot whipping. They questioned him about his activities on Facebook and his activist friends. Nasreddine Rarrbo was finally presented two days later, on 7 February to the prosecutor of Larbaa, who charged him for «*disturbing public order*»¹¹³, «*insulting a state body*»¹¹⁴ and «*writing in public places without permission*». *He is currently on bail. When human rights activists escape detention in isolation and torture, they are mostly victims of judicial harassment.*

¹¹⁰ CFDA press release, *Arrestation arbitraire d'un militant des droits de l'Homme en exil depuis plus de 20 ans*, available at : www.algerie-disparus.org

¹¹¹ CFDA press release, *Iskander Debbache a été libéré samedi soir*, available on CFDA : www.algeriedisparus.org

¹¹² Alkarama, Algérie : *Un militant du Mouvement des Jeunes du 8 mai 1945 torturé pendant deux jours dans un commissariat de police à Blida*, 11 February 2013, available on: <http://fr.alkarama.org/>

¹¹³ Article 440 of the Penal Code

¹¹⁴ Articles 144 and 148 of the Penal Code

2.2. Judicial harassment of human rights' defenders

2.2.1. The legislative framework

Many provisions of the Penal Code are abused or used extensively by the national authorities to harass Human rights activists and prevent them from conducting any activity. Article 19 of the 2 December 1991 Law No. 91-19 relating to public gatherings and demonstrations states: «Any protest that takes place without authorisation or after a ban is considered as a mob» punishable by a prison sentence of three months to one year and a fine of 3,000 to 15,000 dinars. In the same way, Article 97 § 2 prohibits «on the street or in a public place [...]: any unarmed demonstration which may disturb the public tranquillity». By general banning demonstrations in the streets, any peaceful public demonstration is likely to be qualified as unarmed mobs under this provision and the participants are likely to be prosecuted.

Article 96 also states that: «Anyone who distributes, sells, exposes to the public view [...] leaflets, newsletters and flyers that may be detrimental to the national interest, is punishable with a prison sentence of six months to three years and a fine of DZD 3,600 to 36,000».

In practice, the demonstrators and Human rights activists are systematically arrested and prosecuted under the offense of «*incitement in an unarmed mob*»¹¹⁵ or even «*insulting and being violent towards officials and institutions of the State*»¹¹⁶. During 2012, the Network of Human Rights Lawyers has dealt with 131 arrests of activists and defenders of Human rights who have been subject of judicial harassment.

2.2.2. Harassed human rights defenders

The human rights defender, Mohamed Smaïn, who supports the cause of families of the disappeared, has been subject to judicial harassment for years for having discovered and reported the existence of a mass grave in the Relizane province. In 2001, Mohamed Smaïn informed the military police of the presence of a mass grave that he had opened and exhumed. Members of the militia and the police have then moved the bodies to hide any evidence of the

¹¹⁵ Article 100 of the Penal Code: «Any direct provocation of an unarmed mob through speeches given publicly, written or printed, displayed or distributed, shall be punished with a sentence from two months to one year in prison, if it is followed by effect, and otherwise, to a sentence of one to six months and a fine of two thousand to five thousand dinars, or one of these penalties. Any direct provocation by the same means of an armed mob is punishable by a sentence of one to five years in prison, if it is followed by effect, and if this is not so, to imprisonment from three months to one year and a fine of DZD 2,000 to 10,000 or one of these penalties»

¹¹⁶ Articles 144 and 148 of the Penal Code

abuse. Mohamed Smaïn alerted the Algerian press. After which, the former mayor and militia of Relizane filed a complaint against him for «defamation»¹¹⁷, «offense»¹¹⁸ and «denouncing imaginary crimes»¹¹⁹. On 27 October 2011, the Supreme Court upheld the judgement of Relizane's Court of Appeal of 26 October 2007, sentencing him to two months in prison, a fine of 50,000 dinars and 10,000 dinars of compensation. On the morning of 19 June 2012, he was arrested by the police for the safety of the Relizane province. He served his sentence until 6 July 2012, and began a hunger strike to protest against his arbitrary detention before benefitting from a presidential pardon¹²⁰.

Belgacem Rachedi, local activist of the committee SOS Disappeared in Relizane was a victim of flagrant judicial harassment in 2012¹²¹. He rallied families of the disappeared to support Mohamed Smaïn, imprisoned for having denounced the existence of a mass grave in Relizane. A criminal case was fabricated against him. Despite the lack of serious charges against him, he was sued for fleeing the scene after knocking over a boy. Even though all the facts contained in the record demonstrated his innocence, and that he had no connection with the damages caused to the boy, the prosecutor asked that he be taken into custody immediately. The prosecutor has also refused to respond to the request for a hearing of witnesses. Belgacem Rachedi spent two weeks in jail before being acquitted by the court thanks to the rallying of the CFDA¹²².

On 18 April 2012, Abdelkader Kherba, trade unionist and active member of the CNDDC and LADDH, was arrested during a peaceful rally organised as part of the judiciary clerks' protest movement, in front of the court of Sidi M'Hamed in Algiers. He was the only one to be arrested. The police, using brutality, confiscated the camera he was using to film the event. Directly taken to police station located at Cavaignac Street, in the centre of Algiers, where he spent one night in custody before being presented to the prosecutor the next day. Charged with «direct incitement of a mob»¹²³, «usurpation of function»¹²⁴ and «obstacle to the functioning

¹¹⁷ Article 146 of the Penal Code

¹¹⁸ Articles 144 and 148 of the Penal Code

¹¹⁹ Article 145 of the Penal Code

¹²⁰ CFDA press release, Les Nations Unies et la Commission africaine des droits de l'Homme et des peuples saisies de la situation de Mohamed Smaïn, available at: www.algerie-disparus.org

¹²¹ CFDA, *Appel urgent concernant le harcèlement judiciaire des défenseurs des droits de l'Homme en Algérie*, sent to the Special Rapporteur on the situation of human rights and to the Chairman of the UN Working Group on Enforced and Involuntary disappearance (WGEID), August 2012

¹²² CFDA press release, *Le CFDA se félicite de l'acquittement du fils de disparu et défenseur des droits de l'Homme, Belgacem Rachedi*, 10 October 2012, available on the CFDA website: www.algerie-disparus.org

¹²³ Article 100 on the Penal Code

¹²⁴ Article 242 of the Penal Code

of an institution», Abdelkader Kherba was then placed in custody until his trial date scheduled for 26 April 2012. Sentenced to a one year suspended prison sentence and a fine of 20,000 dinars, he appealed. On 11 November 2012, the court of appeal ruled to uphold the initial judgment. During his trial on 26 April 2012, a sit-in was organised by activists outside of the court to denounce the judicial harassment of Abdelkader Kherba. Approximately twenty people were arrested, including Addad Hakim, Tahar Belabbès, Mourad Tchiko, Abdou Bendjoudi and Yacine Zaid. After spending the day in different police stations in Algiers, they were all released. A month and a half later, they were summoned to appear before the court of Bab El Oued on 13 June 2012, for «*incitement of an unarmed mob*», or rather for having participated in the 26 April sit-in. After having been repeatedly postponed, the hearing was finally held on 25 September 2012 during which the Court of Bab El Oued declared that it had no jurisdiction in this matter. According to the testimony of Tahar Belabbès, the CNDDC coordinator arrested on 2 January 2013 during a peaceful demonstration of the unemployed in Ouargla, local authorities sent «*thugs to disrupt our action*»¹²⁵. The police then arrested Tahar Belabbès and other unemployed people, accusing them of causing riots. Among those arrested was Daoui Khaled, who has a 90% disability rating. Accused of «*unarmed demonstration undermining public order*»¹²⁶, «*violence against corporate body*»¹²⁷, and «*destruction of others' property*», Tahar Belabbès was placed in custody for seventy-two hours and had no contact with his family or lawyer. At his trial on January 20, 2013, the prosecutor of the court of Ouargla called for him to have a one year prison sentence. He was eventually sentenced to one month in prison in the first instance and appealed the verdict.

On 12 March 2013, about sixty activists for the right to work organised a sit-in in Ouargla following an appeal from the CNDDC. The Ouargla Court of First Instance sentenced Taher Belabbès and Rachid Djhider to two months in prison and fined them 20,000 dinars for «*insulting a public official who was exercising his duties*» under Article 144 of the Criminal Code. On 20 February 2013, seventeen other young activists were arrested during a demonstration held in front of the labour office of Laghouat to demand the right to work. Twelve of them have been prosecuted by the Laghouat public prosecutor for «*inciting gathering mob*» and «*destruction of others' property*» under Articles 407, 97 and 100 of the Penal Code. On 5th March 2013, they were sentenced to prison terms ranging from one to five years in prison and a fine of 20,000 dinars in the first instance. Finally, during a peaceful demonstration near the court of Algiers in solidarity with Hocine Hussein, prosecuted for glorification of terrorism after hanging a flag at

¹²⁵ GUENANFA (H.), «*Même le Procureur nous a dit que nous avons le droit de demander du travail*», TSA, 6 January 2013

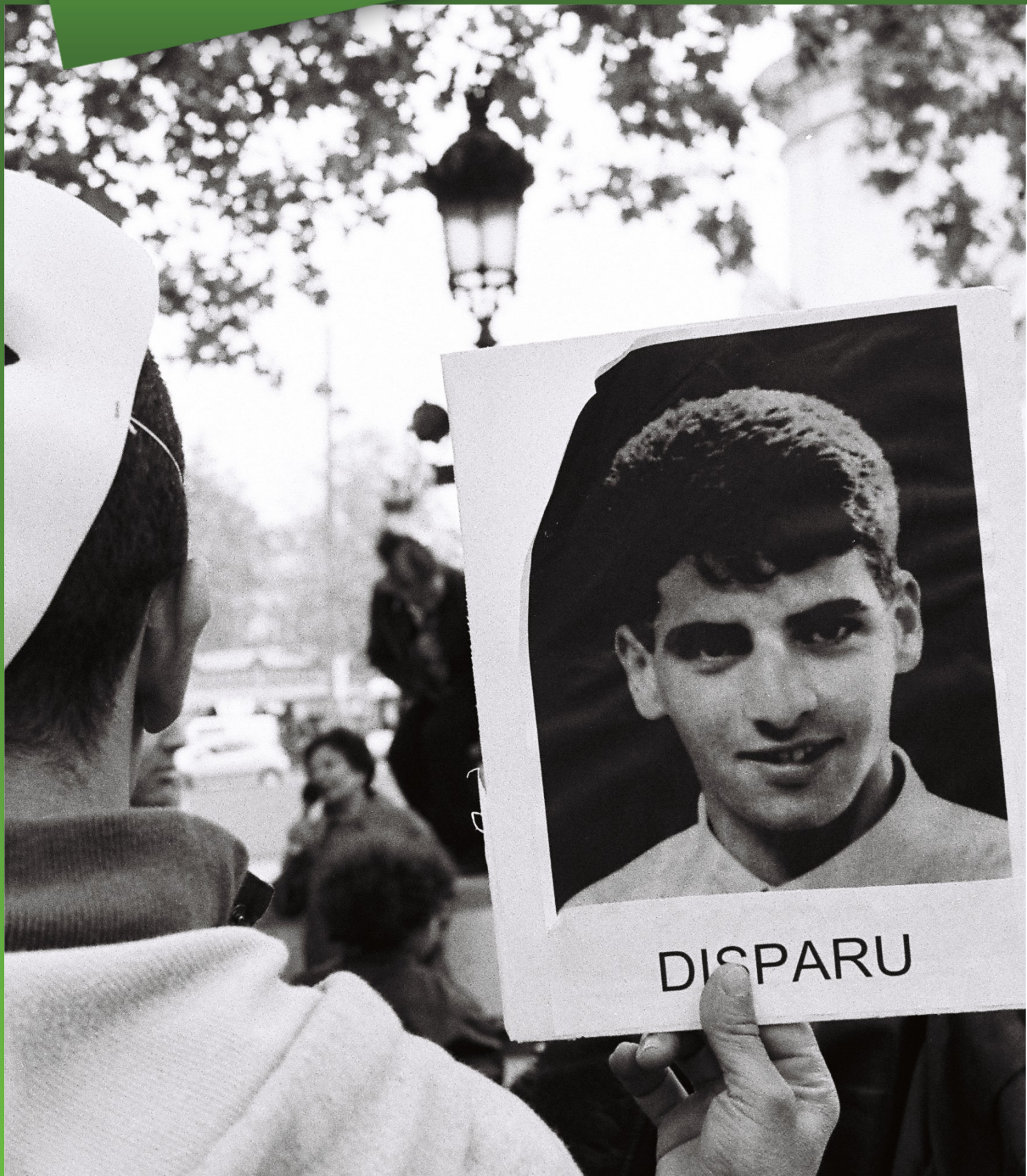
¹²⁶ Article 100 of the Penal Code

¹²⁷ Article 146 of the Penal Code

his home containing the Shahada (profession of faith), the police arrested fifteen activists. On 26 March 2013, fourteen young activist¹²⁸ were prosecuted by the court of Hussein Dey for mobbing and disturbing the public order under Articles 98, 99 and 442 of the Penal Code. The attitude of the justice system against human rights therefore reflects the lack of independence and impartiality it can demonstrate to please the political power.

¹²⁸ This related to Kassas el Aid, Benaoum Abdelah, Manhour Amar, Ben Nakhla Rashid Khaldi Ali, Mustapha Güira, Daadi Mohamed, Gharbou Nasreddine, Slimani Anwar, Ahmed Kacem, Ahmed Hamidi, Ali Attar, Abdelaziz Noureddine and Mameri Tarek.

Chapter 4 - ENFORCED DISAPPEARANCES



Algeria experienced a constant climate of terror during the 1990s when the civilian population was caught between armed Islamist groups and the State's security forces (military, police, municipal guards, patriots). The number of victims of this violence was in the hundreds of thousands. Collective massacres, assassinations, extra judiciary executions, torture, rape, bombings and enforced disappearances were part of daily life for millions of Algerians.

In this context, thousands of people have disappeared, mostly men, with an average age of twenty-five. These were arbitrarily arrested by military security, police, military, military police, municipal guards, or even members of the militia. Families immediately searched for their relatives and followed their tracks for days, even weeks, but all the authorities they approached denied their arrest. They searched hospitals, police stations, morgues, various military and gendarmerie barracks. Complaints were filed with all the institutions and the justice system but never acted upon. The families of the victims of enforced disappearances have never stopped calling on the authorities to shed light on the fate of their relatives and for the agents of the State and perpetrators of enforced disappearances to be prosecuted and tried. These families have organised associations and have been campaigning for many years for the establishment of Truth and Justice.

However, to date, no effective and valuable investigations have been conducted by the Algerian authorities, be they by the administration, the justice system or the police. The Algerian government now officially recognises the existence of 8,023 cases of missing persons, whose fate has never been determined, individually or collectively¹²⁹.

On 29 September 2005, the referendum¹³⁰ adopted the «*Charter for Peace and National Reconciliation*» (Charter)¹³¹, was as adopted by referendum, followed by four implementing legislations¹³² : Ordinance No. 06-01 of 27 February 2006 on the implementation of the Charter

¹²⁹ CNCPPDH, Annual Report 2008, *Etat des droits de l'Homme en Algérie*, 2008, p. 50

¹³⁰ As a reminder, those who opposed the policy promoted by the Charter or called to boycott the polls could not campaign for their position. They have been the most harassed and intimidated, and some of them have even received death threats.

¹³¹ Presidential Decree No. 05-98 of 14 August 2005, published in JORA No. 55 from Monday 15 August 2005

¹³² Published in JORA No. 11 of 28 February 2006

for Peace and National Reconciliation, which is at the core of the system¹³³, the Presidential Decree No. 06-93 of 28 February 2006 on the compensation for the victims of the national tragedy, Presidential Decree No. 06-94 of 28 February 2006 on the State aid to poor families affected by the involvement of one of their relatives in terrorism, and Presidential Decree No. 06-95 of 28 February 2006 on the declaration under Article 13 of Ordinance No. 06-01.

The adoption of these texts recognises the culmination of a long process aimed at ending the «issue of the disappeared» even though the enforced disappearance is a crime under international law (1). This legislation tends to close any investigation into the fate of missing persons by prohibiting the prosecution of alleged perpetrators of enforced disappearances (2), while providing an inadequate compensation procedure (3), and reinforces these measures by generally forbidding any person from using their freedom of expression to question the official version of History (4).

1. The crime of enforced disappearance in international law

Under international law, enforced disappearance is defined in Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance dated 20 December 2006. This article states: «*The term «enforced disappearance «is defined as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or consent of the State, followed by a refusal to acknowledge the deprivation of liberty or by the concealment of the disappeared person's fate or location, removing them from the protection of the law».* Enforced disappearance is considered today as a crime against humanity when committed as part of a widespread or systematic assault against any civilian population and when fully aware of this assault¹³⁴.

The Human Rights Committee has addressed the phenomenon of enforced disappearances¹³⁵ by determining the ICCPR's violated provisions in a situation of enforced disappearance. Thus, the Human Rights Committee has established that any act of enforced disappearance constitutes

¹³³ Ordinance No. 06-01 explains in legal and detailed terms, the policy of «national reconciliation» of which the Charter contains only broad principles.

¹³⁴ Rome Statute of the International Criminal Court, 17 July 1998, Article 7 § 2 para. i. International Convention for the Protection of All Persons against Enforced Disappearances, 20 December 2006, Article 5

¹³⁵ The phenomenon was first known during individual presentations from relatives of missing Latin Americans.

a violation of the right to life¹³⁶ serious threat to this right¹³⁷, right to effective remedy¹³⁸, the right to not be subjected to torture or to cruel, inhumane or degrading treatment¹³⁹, all persons' right to freedom and safety¹⁴⁰, the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of being human¹⁴¹, and the right to the recognition of the legal personality¹⁴² of disappeared people.

Algeria has already been sentenced fifteen times by the Human Rights Committee for cases of enforced disappearances both before and after the Charter came into force¹⁴³. Many documents are still pending before the Human Rights Committee. In each of these decisions, the Committee notes an enforced disappearance and asks the Algerian government for a thorough, prompt and impartial investigation into the allegations. The aim is to shed light on the fate of the disappeared, to adopt measures to ensure effective remedies to victims and their families, to bring criminal proceedings against those responsible for those disappearances, to adopt appropriate remedial measures, including in the form of compensation to the victims or their families and to provide guarantees of non-repetition. However, to date, the Algerian authorities have not responded to these requests. In fact, no effective investigation has been conducted from the facts of these cases, the perpetrators have not been identified, prosecuted or punished, and the victims and their families never received appropriate compensation¹⁴⁴.

In their 2007 concluding observations, the Committee noted that the compensations under Articles 27 to 39 of Ordinance No. 06 - 01 could not be considered as a full compensation

¹³⁶ Article 6 of ICCPR, Article 4 of the ACHPR

¹³⁷ Committee on Human Rights, Views, Document No. 1588/2007, *Benaziza vs. Algeria*, 7 September 2010, § 9.3, Presentation No. 1328/2004, *Kimouche vs. Algeria*, 10 July 2007, § 7.2, Document No. 1295/2004, *El Awami vs. Libya*, 11 July 2006, § 6.2, Document No. 992/2001, *Bousroual vs. Algeria*, 30 March 2006, § 9.2

¹³⁸ Article 2 § 3 of the ICCPR

¹³⁹ Article 7 of the ICCPR, Article 5 of the ACHPR

¹⁴⁰ Article 9 of the ICCPR, Article 6 of the ACHPR

¹⁴¹ Article 10 of the ICCPR

¹⁴² Article 16 of the ICCPR, Article 5 of the ACHPR

¹⁴³ Committee on Human Rights, Views, Document No. 1439/2005, *Aber vs. Algeria*, 13 July 2007; Document No. 1588/2007, *Benaziza vs. Algeria*, 26 July 2010; Document No. 1196/2003, *Boucherf vs. Algeria*, 30 March 2006; Document No. 1781/2008, *Djebrouni vs. Algeria*, 31 October 2011; Document No. 1327/2004, *Grioua vs. Algeria*, 10 July 2007; Document No. 1328/2004, *Kimouche vs. Algeria*, 10 July 2007; Document No. 1495/2006, *Madaoui vs. Algeria*, 28 July 2008; Document No. 1297/2004, *Medjnoune against Algeria*, 14 July 2006; Document No. 1779/2008, *Mezine vs. Algeria*, 25 October 2012; Document No. 1905/2009, *Ouaghli vs. Algeria*, 25 June 2012; Document No. 1753/2008, *Rakik vs. Algeria*, 19 July 2012; Document No. 992/2001, *Saker vs. Algeria*, 24 April 2006; Document No. 1806/2008, *Saadoun v Algeria*, 22 March 2013; Document No. 1791/2008, *Sahbi vs. Algeria*, 22 March 2013

¹⁴⁴ Joint press release between Alkarama, CFDA and TRIAL, *Les efforts se poursuivent en faveur des victimes algériennes !*, 22 March 2013

for the damages to the families of the disappeared, «which can take the form of restitution, rehabilitation and measures of satisfaction (public apologies, public testimonies), guarantees of non-repetition and changes in laws and practices, as well as bringing to justice the perpetrators of violations against human rights»¹⁴⁵. It recalled that the right to an effective remedy necessarily includes the right to adequate compensation and the right to the Truth. The Committee therefore recommended the Algerian government to «commit to guaranteeing that the disappeared and / or their families have an effective remedy and appropriate follow up of their cases, while ensuring the respect for the right to the fullest possible compensation; to commit, in all cases, to clarify and resolve every case of disappearance, in particular the circumstances and the victim's identity; to commit to provide all information and results of these surveys to the families of the disappeared»¹⁴⁶.

2. Denying the Right to Truth and Justice

The families of the disappeared have always been confronted with the impossibility of seeing a real investigation into the enforced disappearance of their loved ones. Indeed, even before the Charter had come into force, any legal action relating to a case of enforced disappearance was immediately rejected. Article 45 of Ordinance No. 06-01 has only legalised and organised the jurisdictional immunity of the State officials.

This article states that «No proceedings may be initiated, either by an individual or a group, against the agents of defence and security forces of the Republic, including all its components, in the framework of actions conducted for the protection of persons and property, safeguarding the nation and preserving the institutions of the people's Democratic Republic of Algeria. Any denunciation or complaint should be declared inadmissible by the competent judiciary authority».

The practice shows that for political reasons¹⁴⁷, prosecutors apply Article 45 in an extensive manner. In many cases, families know the name of the person behind the disappearance of and know the exact State body to which the person who arrested their loved one belongs. However, prosecutors refuse to investigate any complaint relating to enforced disappearances, whether directed against a particular agent of the State or directed against X.

¹⁴⁵ Committee on Human Rights, *Observation générale n°31 concernant l'article 2 du Pacte : La nature de l'obligation juridique générale imposée aux États parties au Pacte*, 21 April 2004, § 16

¹⁴⁶ Committee on Human Rights, *Concluding Observations of the Committee on Human Rights, CCPR/C/DZA/CO/3/CRP.1*, 1 November 2007, § 12

¹⁴⁷ CFDA, «VIII.1. Indépendance de la justice», 2007 - *Rapport alternatif au Comité des droits de l'Homme de l'ONU*, 2007, p. 38-41; EMHRN report, *The Independence and Impartiality of the Judiciary in Algeria*, October 2011, p. 29, see chapter 3 on the judiciary system

Prosecutors even refuse all requests to exhume for the purpose of identifying victims. In September 2011, the Yahiaoui family received a report from the police station in Bab El Oued, informing them that their son, Yahiaoui Toufik, had died and was buried in the cemetery of El Alia, in square number 221 and grave number 60. The family immediately applied for an exhumation of the bodies for identification with the prosecutor at the court of El Harrach, but this latter refused to take the complaint. The application was filed with the Attorney General at the Court of Algiers. More than a year later, no action has been taken. Similarly, a request for exhumation was made for the disappeared Mourad Bendjael with the Court of Algiers in 2012 but as yet there has been no response.

In addition, official documents notifying families of the disappeared that their complaint has been refused are never justified. In this way, Article 45 of Ordinance No. 06-01 never appears explicitly as a reason for refusal, even though it is at the heart of the real reason. Mrs. Boucherf, for example, has never given up her right to the Truth and has never ceased attempting to shed light on the fate of her son, and especially to find his burial place. On 25 May 2008, she was summoned by the prosecutor of Hussein-Dey and was received by the deputy prosecutor. Despite the clear testimony of an inmate stating that her son died under torture in prison, the deputy prosecutor forbade her from coming back and from filing a complaint. In a statement that he delivered to her, he states that *«the request of the complainant is no longer within the competence of the Prosecutor, to the extent that she began proceedings under the Charter for Peace and National Reconciliation»*¹⁴⁸.

Moreover, according to numerous testimonies collected by the CFDA and documents and correspondence received by families, the Republic's prosecutor, instead of recording the complaints, persuades the complainant to go to the family court, to engage in the compensation procedure provided in Articles 27 to 39 of Ordinance No. 06-01 implementing the Charter.

Article 45 therefore sets out the jurisdictional immunity of officials who committed crimes during the 90s. It aims to make any form of justice for families of disappeared impossible. It does not exclude any crime from its scope, not even the most serious violations of Human rights, such as enforced disappearances, torture and extra-judiciary executions. On the field, this is similar to an amnesty; it is a violation of the right to Justice for the victims of enforced disappearances and their families. Indeed, according to the Human Rights Committee, State parties cannot relieve

¹⁴⁸ Communication n°1196/2003, Fatma Zohra Boucherf vs Algeria, 27 April 2006; Followed by findings submitted by the author on 30 March 2006 and 11 September 2008.

the perpetrators from their personal responsibility by adopting amnesty laws¹⁴⁹. In fact, the State has «a duty to investigate thoroughly alleged violations of human rights, particularly enforced disappearances and violations of the right to life, and to criminally prosecute, try and punish those deemed responsible for such violations. This duty applies a fortiori in cases in which the perpetrators of such violations have been identified»¹⁵⁰.

This provision also violates the right to Truth for the families of the disappeared. The right to know is an imprescriptibly, inalienable and autonomous right, related to the State's duty and obligation to protect and ensure the respect of Human rights, conduct efficient and effective investigations and ensure appropriate and effective remedy and compensation¹⁵¹. The respect of this right is necessary in order to end the waiting and suffering of the victims' families.

3. Violation of the right to full compensation

The measures established by the Charter and its implementing regulations, encourages families of the disappeared to start the compensation process under Articles 27 to 39 of Ordinance No. 06-01. Paragraph 8 of subsection IV of the Charter: «Missing persons are considered victims of the national tragedy, and their eligible family members are entitled to compensation». Section 27 of Ordinance No. 06-01 of 27 February 2006 provides in paragraph 1 that «any person reported as missing in the particular context generated by the national tragedy is considered a victim of the national tragedy.» Paragraph 2 states that «the status of a victim of the national tragedy follows the judiciary process establishes a missing report after an unsuccessful search». This report of disappearance entitles the introduction before a competent court of a motion for a declaratory judgement of death by the beneficiaries, any person having an interest therein, or the prosecutor (Articles 30, 31 and 32 of the Order of 27 February 2006). Only persons in possession of a final declaratory judgement of death can get the compensation provided for in Article 37 of the Ordinance. This provision does not provide appropriate or adequate compensation to the families of missing persons. Indeed, it only provides a simple financial

¹⁴⁹ Committee on Human Rights, Views, Communication n°1588/2007, *Benaziza vs. Algérie*, 26 July 2010, § 9.9 ; Committee on Human Rights, General Comment No. 20 : Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, § 15 : « Amnesties are generally incompatible with the duty of States to investigate such acts ; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible»

¹⁵⁰ Committee of Human Rights, Views, Communication No. 612/1995, *José Vincente et al. v. Colombia*, 19 August 1997, § 8.8

¹⁵¹ Article 24 of the International Convention for the Protection of All Persons against Enforced Disappearance, 2006; Committee of Human Rights, Observation, Communication No. 107/1981, *Almeida de Quinteros and others v Uruguay*, 21 July 1983 § 14, Communication No. 950/2000, *Sarma v Sri Lanka*, 31 July 2003, § 9.5; *Concluding Observations on Guatemala*, April 3 1996

compensation which is conditional on the delivery of a report of disappearance then of a judgement of death of the disappeared person, which are not preceded by any impartial and effective investigation to clarify the real fate of the missing person.

3.1. Lack of effective investigation

In principle, the report of disappearance is issued by the judicial authorities following fruitless searches, which can be led using all legal means, including the search for testimonies and DNA records¹⁵². But in reality, families are just heard by the police, who then do not conduct any effective investigation. Two to three weeks later, families are issued an report of disappearance which mentions, without any explanation, that following fruitless search, the person is declared as missing, or in many cases, it is classified in the category «dead in a clash with armed groups». The minutes of a report of disappearance are standard documents. Thus, since the implementation of the Charter and its implementing regulations, among the thousands of missing persons in Algeria, none has ever been found, alive or dead! Yet the Algerian authorities and the CNCPPDH president, Farouk Ksentini himself, recognise the existence of at least 3,000 graves marked with an X in Algerian cemeteries. But so far the authorities have not expressed any desire to open the X-marked tombs or graves to identify the bodies.

Moreover, it is not uncommon that the police refuse to issue the report of disappearance because the missing person is not listed on their list¹⁵³ or because he would have died in a clash with armed Islamist groups. The family is then ordered to take a death certificate, in which it is mentioned that the missing person has died among armed Islamist groups, even though the family says that the person was arrested by agents of the State at his house, at work or in a public place. Early in 2013, Mrs. Meabiou was summoned to the El Biar police station where she was required to sign a statement certifying that her son died in a clash when he had been arrested at his house during night. Two days after his arrest, the police came back to his house with him in a deplorable condition. He had obviously been tortured: his flesh had been torn from the side of his right shoulder, he had bruises on his face and all over his body and his clothes were torn. The police turned the garden upside down in search of a weapon; they found nothing

¹⁵² The procedure of death declaration through judgment is specified in Articles 29 to 36 of Ordinance No. 06-01. Article 30 imposes a particularly thorough search «*by all legal means*» to be conducted to establish the circumstances of the enforced disappearance and to determine the fate of the disappeared and the place where he/she is located. Paragraph 2 states that «*the minutes of observation of the disappearance of the person is established by the judiciary police after investigation. It is delivered to disappeared eligible family members or to any person having an interest with this regard, in a period not exceeding one year from the date of publication of this Ordinance No. 06-01 in the Journal.*»

¹⁵³ The police claim to have a list of missing persons but it has never proved the existence of such a list, which is not available anywhere.

and left the house with him. Since then, the family has heard no news despite all of their efforts. In 2013, and while the family was witness to all of these atrocities, the police ordered Mrs. Meabiou to sign a statement certifying that her son had died in a clash! Despite the violence of the police officer who ordered her to sign, Mrs. Meabiou did not give in to the intimidation. The shock caused an increase of blood pressure which has left her paralysed.

3.2. Establishing a judgement of death: torture for families

Only persons possessing a final judgement of death can get the compensation provided for in Article 37 of the Ordinance. Establishing a judgement of death is a painful process that families undertake reluctantly and often constrained by the material and financial misery in which they live since the disappearance of their loved ones. Indeed, beyond the moral suffering, the disappearances often lead to undeniable material losses for families. The persons abducted by State agents are generally men who were the only ones working in their family, and their disappearance generally leads to the loss of an income for the family, as low as that may be.

In addition, families of the disappeared face administrative difficulties and are forced to overcome them to accept the compensation procedure. The lack of legal authority of mothers over their children constitutes such an example of a fundamental problem. The mother can indeed only ensure the administrative acts of daily life, (parental authority, managing a bank account, a heritage, transferring property titles, getting a retirement allowance, etc.) if she has a judgement of death proving the father is dead even if there is still hope. Thus in 2013, the daughter of missing Mohamed Brahim from Algiers and first year student at the University of Algiers, was denied a scholarship under the pretext that she should first obtain the judgement of death of her father.

As well as this, the government's propaganda tries to make families accept compensation. Indeed, the regular notifications sent to families by the authorities wanting to force them into declaring their relatives as deceased and engaging in a compensation procedure represent a real moral and psychological harassment. Nassera Dutour, mother of a missing person and spokesperson for the CFDA, has herself been a victim of harassment to force her to engage in the compensation process. In fact, she and her family were first harassed by the military police, against whom they filed a complaint. After that, it was the police, who regularly came to the house of Mrs. Yous, Nassera Dutour's mother, asking her to sign the papers for the compensation procedure. On several occasions, summonses were sent to Nassera Dutour with the same request. In the month of July 2011, she received four summonses from different police stations. It is not an isolated case. Many families suffer this same form of harassment.

In some cases, public or judiciary authorities eventually attempt to apply Article 32 of Ordinance No. 06-02, which provides that «*the beneficiaries, any person having an interest therein or the prosecutor may request the establishment of a judgment of death*». In fact, some families have appeared before the family affairs judge following a request by the prosecution to establish a judgement of death for the disappeared person, despite the family's objection. The Algerian authorities' objective is to be able to declare the death of all those who disappeared during the 1990s through a judgement of death that would be established automatically in order to close the file without establishing Truth and providing Justice. In the case of the Yekhlef family, for example, who refused to engage in proceedings for compensation, the court prosecutor in Boudouaou (Boumerdes) requested the issuance of a judgement of death. The judge denied the request of disappearance certificate in the first instance, and the prosecutor appealed this decision. The Supreme Court passed the judgement of death for the missing person. Condition the granting of compensation to the judgement of death means asking the families to give up their right to Truth, and requiring them to officially deny the existence of their enforced disappearance being a crime, and, worst still, to end the life of their child or missing relative themselves. This provision is a form of cruel, inhuman and degrading treatment of the relatives of the disappeared, which is contrary to Algeria's international commitments. The Committee against Torture has indeed considered that some provisions of Ordinance No. 06-01 could constitute inhuman and degrading treatment¹⁵⁴.

3.3. Terms of compensation

Damages paid to families are far from being appropriate financial compensation. Indeed, the calculation and payment of compensation «*makes use of the provisions of laws and regulations in favour of the deceased victims of terrorism*»¹⁵⁵ and do not come from own funds especially dedicated by the State to compensate victims of enforced disappearances. The amount and form of the compensation are not determined by the harm suffered by the victim and their family, but depends on the age and professional status of the person at the time of disappearance¹⁵⁶. So, compensation is more an aid granted under the national solidarity than full compensation.

¹⁵⁴ Committee against Torture, *Concluding Observations made on Algeria*, 16 May 2008, § 13: «*The Committee expresses its concern over the provisions of order No. 06-01 implementing the Charter for Peace and National Reconciliation which require the families of missing persons to certify the death of the family member in order to receive compensation, which could constitute a form of inhuman and degrading treatment for such persons by laying them open to additional victimization.*»

¹⁵⁵ Article 39 of Ordinance of 27 February 2006

¹⁵⁶ Presidential Decree 06-93 of 28 February 2006 *related to the compensation for victims of the national tragedy*

Finally, it is not uncommon for families who have accepted compensation to still not have received it. This is the case for a dozen families in Oran who have been waiting for their compensation since 2006. At Tipaza, for example, out of the seven family members of missing person Lalaoui Ahmed who requested compensation, two are still pending because they belong to families not on the list of the disappeared.

4. The prohibition of any criticism against authorities

Article 46 of Ordinance No. 06-01 penalises words and actions establishing the liability of crimes committed in the 90s by State officials, especially enforced disappearances, in violation of the freedom of expression and the right to the freedom of peaceful gathering. It was indeed intended to prevent any questioning of the official version of history written by the Charter of 2005, as well as any criticism of the State or its agents who acted at that time. The official version denies the enforced nature of the disappearances, the involvement or culpability of State officials in enforced disappearances, or any other crime such as extra-judiciary killings and torture. It denies that the Algerian state has failed its international obligations.

This article is a direct threat to anyone who wants to publicly denounce the human rights violations or initiate a debate on this subject. It threatens not only the direct victims and their families, dissuading them from filing complaints, even in case of persistent violations of their Rights, but also journalists forced into self-censorship. It also prevents the families of the disappeared, Human rights defenders or any citizen wishing to seek the Truth about the fate of the missing, to organise the fight against impunity and the topic of national reconciliation. On 4 August 2010, the weekly demonstrations held every Wednesday since August 1998 by the families of the disappeared near the headquarters of the CNCPPDH in Algiers, were banned. The police did not hesitate to use inexcusable violence against mothers of disappeared¹⁵⁷. These assemblies are still currently forbidden¹⁵⁸, and the police is always present to prevent any attempt by parents of the disappeared to hold their gatherings. Apart from the weekly meetings, other events are regularly organised at certain occasions of commemoration. However, there are many cases where the police prevent family members to meet and violently repress these peaceful gatherings¹⁵⁹. In an interview with the press, the CNCPPDH president stated: «we must admit that the Charter for Peace and National Reconciliation, does not even allow us to

¹⁵⁷ CFDA press release, *Nous ne serons jamais fatiguées, nous ne céderons pas, nous n'arrêterons pas : jusqu'à la mort, pour nos enfants*, 4 August 2010, available on the website of the CFDA: www.algerie-disparus.org

¹⁵⁸ CFDA press release, *L'état d'urgence levé, mais le rassemblement des mères de disparus demeure interdit*, 2 March 2011, available on the website of the CFDA: www.algerie-disparus.org

¹⁵⁹ Cf Chapter 8 on Freedom of Assembly and Peaceful Demonstration

talk about the missing. That's the problem!» «The Charter is the force of law; you must read it to understand that the issue of missing persons has been gotten rid of. The matter is closed.»

Chapter 5 - WOMEN'S RIGHTS



The Constitution contains several provisions guaranteeing women's rights. Article 29 states that all citizens are free and equal regardless of gender. Article 51 allows equal access to functions and positions within the State for all citizens, with no other restraints apart from those established by law. Article 31, meanwhile, guarantees equality in rights and duties of citizens and states that the institutions are intended to ensure this equality by removing obstacles that hinder the progress of these duties and prevent effective participation of all. Finally, after the 2008 constitutional reform, Article 31a was introduced and provided for the participation of women in politics and their representation in elected assemblies. Outside of the constitutional framework, no provision defines or prohibits discrimination against women.

At an international level, women's rights and legal equality are protected by different instruments ratified by Algeria. These include the ICCPR¹⁶⁰, the International Covenant on Civil and Political Rights¹⁶¹, ACHPR¹⁶², its Protocol on the Rights of Women in Africa¹⁶³ or the Convention on the Elimination of All Forms of Discrimination against Women¹⁶⁴. This latter was begrudgingly ratified by Algeria in 1996, enabling it to implement the Convention, provided it did not go against the provisions of the Algerian Family Code¹⁶⁵. Finally, on 13 March 2013, the UN General Assembly adopted a declaration on violence against women which rejects any custom, tradition or religious consideration to justify violence against women.

Today, the majority of Algerian women have access to education, many have access to a university education and some even work in positions of high responsibility. In 2012, however, Algeria remains in 120th place out of 134 countries where discriminations against women are the most numerous¹⁶⁶. More than 6,000 women were victims of violence of many kinds during

¹⁶⁰ Articles 2 § 1, 3, 4, 23 et 26 du PIDCP

¹⁶¹ Articles 2 § 1, 3, 7 and 10 of the International Covenant on Economic, Social and Cultural Rights, adopted on 16 December 1996 and ratified by Algeria in 1989

¹⁶² Articles 2, 18 and 28 of the ACHPR, adopted on 27 June 1981 and ratified by Algeria in 1987

¹⁶³ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted on 11 July 2003, signed by Algeria on 29 December 2003 but not yet ratified

¹⁶⁴ Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979; Algeria has neither signed nor ratified the Optional Protocol in 1999.

¹⁶⁵ Algeria has expressed reservations on Articles 2, 15 § 4, 16 and 29.

¹⁶⁶ HAUSMAN (R.), TYSON (L. D.), ZAHIDI (S.), *The Global Gender Gap Report*, 2012

the year 2012¹⁶⁷. The Committee on the Elimination of Discrimination against Women in 2012 and the Special Rapporteur on violence against women in 2011 have also expressed serious concerns about the numerous violations of women's rights committed in Algeria¹⁶⁸. Discrimination and violence against women are made possible by the existing legal framework (1) and the practice of national institutions (2), which not only do not protect women, but oppresses them.

1. 1. Women and the legal framework

1.1. Discriminatory provisions in the family code

Although Algeria has ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1996, it has many reservations including ensuring the rule of the Algerian Family Code. Published in 1984, the Family Code contains many discriminatory provisions. It has, however, undergone significant changes in 2005¹⁶⁹. For example, the concept of head of household and the duty of obedience of the wife to her husband and family have been removed, the mutual consent of both spouses as a condition of marriage and the right of the adult woman to freely choose their Governor were introduced to Article 9. Similarly, the scope of reasons a woman may seek divorce has been augmented (Article 53). However, these changes are insufficient. None of the Code's provisions defines or sets sanctions for discriminations against women. In addition, many discriminatory provisions against women regarding their status in the family and society still exist¹⁷⁰.

1.1.1. Marriage

Firstly, while the man may enter his own marriage without an intermediary, the woman has to marry with the presence of her legal guardian, or wali, who can be her father, relative or any other person of her choice (Article 11). However, this last possibility is only theoretical, since in practice it will be difficult for a woman to ask a man who not a relative to be her guardian.

¹⁶⁷ According to a report from the national gendarmerie

¹⁶⁸ Committee on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women, Algeria, March 2, 2012, CEDAW/C/DZA/CO/3-4; MANJOO (R.) Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Mission in Algeria, 19 May 2011, A/HRC/17/26

¹⁶⁹ Ordinance n°05-02 of 27 February 2005 amending and supplementing the Law n°84-11 of 9 June 1984 on the reform of the family code

¹⁷⁰ Committee on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women, Algeria, 2 March 2012, CEDAW/C/DZA/CO/3-4, § § 46 and 47; Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Manjoo, mission en Algérie, 19 May 2011, A/HRC/17/26, §§ 31-33 et 50-59

The consent of both spouses is required, but in case of marriage of a minor, the guardian may oppose the marriage. In practice, forced marriages are still common and girls wanting to oppose it are often powerless.

Future spouses are also required to submit a medical certificate so that both partners are aware of any illnesses they suffer at the time of marriage (Article 7a). In practice, this has sometimes been interpreted as an obligation for the bride to present a «certificate of virginity»¹⁷¹.

Discrimination against mixed marriages is also present as it is forbidden for a Muslim woman to marry a non-Muslim man¹⁷² (Article 30), but this prohibition does not apply to men (Article 31). This ban looks like a temporary incapacity likely to lead and suggest to the husband of another faith to convert to Islam.

Moreover, despite some restrictions, polygamy is still permitted. A simple decision on the husband's behalf is now no longer sufficient; he is expected to get the consent of his wife and the authority of the presiding judge. This latter shall check the wife's consent as well as the reasons and the ability of the husband to ensure fairness and to provide the necessary conditions for the conjugal life (Article 8). In practice, these restrictions are considered mere formalities and are often bypassed. The spouse may therefore proceed in a religious marriage ceremony with his new wife and does not require an official registration of such a marriage or have it validated by a subsequent judge¹⁷³, despite the fact that a notice from the Ministry of Religious Affairs dating from 2000 imposes civil wedding before the religious wedding. Many accounts also show that the consent of the woman in a polygamous union is obtained through threats or violence from the husband¹⁷⁴. Finally, the choice left to the wife is artificial because if she refuses, the husband can simply divorce her.

1.1.2. Divorce

The inequality of the spouses regarding divorce still persists. Whereas the man can divorce by repudiation, of his own will and without any justification, the woman can divorce for

¹⁷¹ Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, mission in Algeria, 19 May 2011, A/HRC/17/26, § 54

¹⁷² Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights, Mission in Algeria E/C.12/DZA/CO/4, 7 June 2010, p.4 § 14

¹⁷³ Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, mission in Algeria, 19 May 2011, A/HRC/17/26, § 56

¹⁷⁴ The Special Rapporteur on violence against women report, its causes and consequences, Ms. Rashida Manjoo, mission in Algeria, 19 May 2011, A/HRC/17/26, § 56

certain reasons strictly allowed by law (Article 48). New reasons have been introduced: the disagreement between spouses, the violation of clauses in the marriage contract, including those relating to the protection of the right to work and the prohibition of polygamy (Article 53). However, these cases are restrictive and difficult to implement practically, especially when proving the alleged infringement. The woman still has the right to initiate a divorce proceeding under the *Kohl'* procedure, agreed repudiation, which is brought about by the husband but at the wife's request. We must admit that the reform of 27 February 2005 introduced an extension to Article 54. Now it is no longer necessary for a woman to obtain the consent of her husband before separating by *Kohl'*. However, women should always pay compensation. In case of disagreement on the compensation, the court shall determine the sum to be paid which it will rule to be a fair amount.

The effects of divorce are just as discriminatory particularly regarding the provisions for alimony and for child support. According to Article 72, if the woman gets custody of the children, the father must provide her with adequate housing or otherwise pay the rent. In addition, women with custody of children have the right to remain in the marital home up until the execution of the judiciary decision by the father. In practice, however, this article does not provide effective protection. Childless women and those who are not awarded custody receive nothing. Sometimes the father tries to get custody of the children to continue to live in the family home. Furthermore, the amount of rent is determined by the judge on the basis of the official rents, whereas the actual market prices are much higher. Women therefore find themselves without the sufficient means to pay rent. Moreover, because Algerian society does not readily accept the status of «divorced woman», a large number of families refuse to welcome back their daughters who are divorced or separated. They often have no option but to go live on the streets or stay in their former spouse's house, where they are forced to coexist with the new wife or wives and where they are often victims of violence¹⁷⁵.

Following the divorce or death of a spouse, other forms of discrimination prevail. The woman is forced to observe a specific period called «the statutory retirement» or waiting period (*'Iddah*), during which she cannot remarry¹⁷⁶. While initially this period was imposed to avoid the confusion of filiation, today's means of controlling pregnancy are such that the rule is outdated. In practice, the widower and divorcee are submitted to a particular regime by traditions and society. She is, for example, obliged to not leave the marital home for a period of three months

¹⁷⁵ Report presented by Raquel Rolnik, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living as well as the right to non-discrimination with this regard, mission to Algeria, 26 December 2011, A / HRC / 19/53, § 50

¹⁷⁶ Articles 58-61 of the Family Code

following a divorce and for a period of four months and ten days after her husband's death.

The provisions relating to parental authority and custody of children also reveal inequalities between men and women. The father is the guardian of the couple's minor children and the mother «compensates» the father's absence or incapacity. Therefore, even if the mother has priority for gaining custody of her children in divorce cases following the judge's decision (Article 64), she loses this right if she remarries (Article 66). The practice is equally discriminatory. An example is that of Dr. Azzoug, divorcee, who was denied in July 2012 permission to go out with her underage son by the Police Station of Hussein-Dey under the pretext that the judgement granting her custody of her child did not explicitly specify that she had parental authority.

1.1.3. Inequalities regarding inheritance

The inheritance law remains discriminatory¹⁷⁷. The woman receives half of what the man receives. Thus, in the context of a married couple with at least one child, the husband whose wife dies will inherit a quarter of the estate (Article 145), while the woman whose husband dies will inherit an eighth (Article 146). The economic dependence of women is reinforced in this way.

1.1.4. Inequality for the wives of the disappeared

These different forms of discrimination are even greater for wives of missing persons who refuse to apply for the judgement of death under Ordinance No. 06-01¹⁷⁸. The issue of guardianship of children whose father has disappeared poses for example particular issues. Under current legislation, a person can be ruled as missing while the missing person is unable to return home for reasons of force majeure and while his or her absence causes harm to others. The evidence of the absence is difficult to make in court. For example, many brides of the disappeared have been confronted for years by administrative obstacles concerning custody or administration of the spouse's property are obliged to request the establishment of a judgement of death for their missing husband. The husband of a missing woman, however, is not confronted by all of these obstacles to continue managing his family's affairs.

1.2. A largely inadequate criminal law to protect women against violence

¹⁷⁷ Book three - Successions: Items 126 to 183 of the Family Code

¹⁷⁸ Cf Chapter 4 on Enforced Disappearances

Violence against women is a widespread practice in Algeria. Nearly three hundred women have suffered sexual violence during the first ten months of 2012¹⁷⁹. Punitive raids against women living alone are still numerous. Indeed, the 2001 tragedy in the oil-producing city of Hassi Messaoud in southern Algeria¹⁸⁰, occurred again in Hassi Messaoud in 2010, and even in other parts of the country, like Ouargla, Remchi, Bordj M 'Sila or in 2012 in the Algiers suburbs¹⁸¹. In this context where violence against women is recurrent, the Penal Code does not allow to fight against it and put an end to it. It does not include any provision specifically criminalising discrimination or violence against women, and it therefore proves insufficient to ensure their effective protection¹⁸².

Article 336 of the Penal Code states: «Anyone who commits a crime of rape is punished by a prison sentence of five to ten years. If the rape is committed against a minor of 16 sixteen years old, the penalty is a prison sentence of ten to twenty years». Although this article punishes rape, it does not give an accurate definition of rape. The absence of a decree to legalise abortion in cases of rape must also be lifted. Finally, the Penal Code does not define other sexual violence outside of rape.

In practice, women who have suffered sexual violence are not always heard, listened to or protected by the police. In Warda's case, twenty-three, who was kidnapped and raped by several individuals in 2008, the police of Batna refused to register her complaint¹⁸³. In addition to not providing the necessary protection to women, the police force them to have virginity examinations after identity checks when they are with young men. In March 2013, two seventeen year-old girls were subject to an identity check while they were on their way home from a birthday party at 4:00 am¹⁸⁴. The duty police officer of Cheraga police station entrusted

¹⁷⁹ APS, «Près de 300 femmes victimes de violences sexuelles en dix mois», *El Watan*, 9 December 2012

¹⁸⁰ MOUFFOK (G.), «Femmes émancipées dans le piège de Hassi Messaoud», *Le Monde diplomatique*, June 2010: In 2001, in Hassi Messaoud, hundreds of women were «beaten, hit, stabbed, undressed, thrown naked into the streets, dragged along the ground, lynched by the crowd, mutilated, tortured, raped and some were buried alive.» Their houses were looted or burned. The police did not arrive to the location of the assault until 3 am, five hours after the assault began. Twenty defendants were convicted in absentia and sentenced to twenty years in prison, and out of the six accused present at the trial, three were sentenced to eight years, six years and three years in prison, while three were acquitted..

¹⁸¹ R.M., «De Hassi Messaoud à Alger: l'inquisition contre les femmes seules...», *Le Matin DZ*, 7 March 2012

¹⁸² *The Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, Mission in Algeria*, 19 May 2011, A/HRC/17/26, §§ 34, 60-62; Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women, Algeria*, 2 March 2012, CEDAW/C/DZA/CO/3-4, §§ 29 et 30

¹⁸³ TLEMCANI (S.), « Femmes violées et brutalisées : Quand la justice se dérobe », *El Watan*, 11 March 2013

¹⁸⁴ TAZEROUT (I.), « Des jeunes filles soumises au test de virginité à Alger. Les témoignages qui accablent la police »,

the two girls to the care of the hospital gynaecologists for a virginity test and demanded to know the results, despite the doctors' refusal to give up the right to medical confidentiality. These practices are violations of women's rights to physical integrity and privacy.

Furthermore, no provision in the Criminal Code specifically criminalises rape, sexual abuse or other violence in the marital context. These practices are still taboo in Algerian society. In 2011, no court had treated a case of conjugal rape¹⁸⁵. In 2011, 24 women died from domestic violence suffered at the hands of their husbands or family members¹⁸⁶. In 2008, Hadda was beaten to death by her husband whilst she was six months pregnant. He was never prosecuted because the victim's father forgave him. Nassima, architect at Kouba's People's Municipal Assembly (APC) and mother of two, died in December 2011 after her husband stabbed her multiple times in the throat. Not only was this 40 year old woman murdered, but several newspapers published shameful explanations to justify this unjustifiable crime¹⁸⁷. Today, official data on reported cases of domestic and sexual violence against women, criminal investigations, prosecutions and convictions are not available.

Moreover, Article 341 a of the Penal Code, which criminalises sexual harassment since 2004 based on the abuse of authority, suffers from a restrictive definition as it applies to cases of sexual blackmail, but not to other forms of harassment which are not based on an abuse of authority. In addition, reporting such abuse in practice is rare, due to the victim's fear of reprisals and the lack of protection of victims and witnesses in criminal case¹⁸⁸. Some women, however, dare to press charges. This is the case of two journalists and a script of TV station Tamazight TV4, who filed a complaint on August 2011 with the public prosecutor of Algiers against their officer for «sexual harassment, touching, bullying and pressure in the workplace». In October 2011, Saïd Lamrani, the head of the TV station, was sentenced to a six month suspended sentence, a 200,000 dinars fine and 100,000 dinars in damages to each of his victims. The Algiers Court of Appeal upheld the conviction on 6 January 2013¹⁸⁹. The few women who dare press charges can sometimes see things turn against them and be accused of defamation for reporting

L'Expression, 20 March 2013

¹⁸⁵ *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, mission to Algeria*, 19 May 2011, A/HRC/17/26, § 60

¹⁸⁶ ARAB (F.), « 24 femmes mortes violentées en 2011 », *El Watan*, 27 November 2011

¹⁸⁷ F. Z. B., « Pour défendre la mémoire de leur collègue assassinée par son mari, les cadres et les travailleurs de l'APC de Kouba se rassemblent », *Le Soir d'Algérie*, 7 December 2011

¹⁸⁸ *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, mission to Algeria*, 19 May 2011, A/HRC/17/26, § 18

¹⁸⁹ AMIR (N.), « Procès en appel de l'ex-DG de la TV4 -Peine confirmée et amende augmentée », *El Watan*, 7 janvier 2013

sexual harassment of which they were victims. This is the case of two Bank of Algeria employees who filed a complaint of harassment against their supervisor and were sentenced in 2008 by the Court of Sidi M'Hamed to a two month prison sentence for slander¹⁹⁰.

The study of the Algerian law reveals that many provisions continue to be discriminatory against women and that they are insufficient in effectively protecting them from violence.

2. Women in institutions and politics

2.1. Participation of women in politics

Although Algerian women received the right to vote in 1958, they are still largely underrepresented in the country's political and public life. The 2008 Constitutional reform introduced new Article 31a which provides that «the State shall work to promote the political rights of women by increasing their access to representation in elected assemblies». In January 2012, the Organic Law No. 12-03 «setting the measures for increasing the opportunities for women to have access to representation in elected assemblies» came into force¹⁹¹. However, amendments to the text by the People's National Assembly deprived the law of all substance. Indeed, the initial draft predicted at least 30% of women on electoral lists and gave them a special place on the lists. The law that was finally adopted set differentiated quotas for legislative and local elections, between 20% and 40% depending on the number of seats provided by the electoral district. In addition, the law does not contain a provision requiring women to lead the list or to alternate between male and female candidates, and does not impose a minimum representation in elected assemblies. Finally, while the voted legislation envisaged a regular evaluation mechanism of its implementation, the Constitutional Council declared this provision unconstitutional, and this mechanism has been removed from the promulgated law¹⁹².

In practice, the People's National Assembly (lower chamber) has 31 women out of the 389 members, i.e. 7.9% of the Assembly, who were elected in the 2007 elections. The number of women has increased as shown by the 147 women who were elected in the 10 May 2012 elections. At the Council of the Nation (upper chamber), there is still no imposed quota for women

¹⁹⁰ «Affaire des femmes condamnées pour avoir dénoncé un harcèlement sexuel, la société civile s'organise», Liberté, 6 November 2008; TLEMCANI (S.), «Victimes de harcèlement sexuel: 2 mois de prison avec sursis pour avoir brisé le silence», *El Watan*, 4 November 2008

¹⁹¹ CFDA, LADDH, EMHRN «Political Reforms» or *Additional Lock on Society and Politics in Algeria? A critical analysis*, April 2012, p. 29-41

¹⁹² Opinion of the Constitutional Council No. 05/A.CC/11 of 22 December 2011 *on the control of the conformity of the organic law establishing the expansion terms of the representation of women in elected assemblies, to the Constitution*

representation. According to Article 101 of the Constitution, «Two-thirds of the members of the Council of the Nation are elected by indirect and secret suffrage among and by the members of the People's Municipal Assemblies and the People's Provincial Assembly. One third of the Council of the Nation's members is appointed by the President of the Republic from among the national personalities and nationally skilled people in scientific, cultural, professional, economic and social fields». Only 10 women, so 7% of the Council, were elected out of 144 Senators. At the renewal of 29 December 2012, no woman was elected. During the 2007 local elections, the elected women candidates represented 13.44% of the total of elected candidates at the people's provincial assemblies and 0.74% of the total of elected candidates at the people's municipal assemblies. The 2012 law established a quota of female candidates on electoral lists at 30% or 35% depending on the size of the province, and 30% in communes of more than 20 000 inhabitants. The quota has been implemented during the last local elections of 29 November 2012. Only two mayors were elected. This reveals the law's failure in allowing expanding women's access to representative positions in elected assemblies. Finally, only three women are members of the government, formed on 4 September 2012, consisting of thirty-eight ministers and secretaries of State¹⁹³.

2.2. Low rate of women's employment and access to managerial positions

Moreover, even if we can see an increase in women's presence in the labour force, which today represents 14%, they remain largely underrepresented with regard to managerial positions, both in the private and public sectors, except in the field of education, health and law¹⁹⁴. In addition, women earn significantly less than men and the unemployment rate is higher among women, with an estimated average of 18.1% against 8.6% for men¹⁹⁵. Stubborn patriarchal attitudes therefore continue to impede women's access to employment. Mrs. Bentahri Fatiha, activist for Moussa Touati's Algerian National Front party (FNA), suffered discrimination. Appointed Rapporteur after the installation of the commission for monitoring elections, the activist was dismissed from this position in March 2012 by the chairman of the committee. The latter was then pressured to cancel her nomination by invoking the fact that the post of Rapporteur would return to a man, because the office of the commission was to deal with «confidential business»

¹⁹³ Presidential Decree No. 12-326 of 4 September 2012 appointing the members of the Government, OJ No. 49 of 9 September 2012, p. 4

¹⁹⁴ Algerian National Office of Statistics, *Emploi et chômage au 4ème trimestre 2010*, 2010 ; Gouvernement algérien, *Nations Unies, Algérie, Deuxième rapport national sur les objectifs du Millénaire pour le développement*, September 2010, available at: www.un-algeria.org/reports/rapport_OMD.html

¹⁹⁵ Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights, Algeria*, 7 June 2010, E/C.12/DZA/CO/4, § 8

that only a man could assume¹⁹⁶. Thus, although certain measures have been adopted, they are only applied to parts of public and political life. The representation of women in public and private employment, and functions at all levels of government, remains minor.

2.3. Protection of women in institutions

The Algerian government has implemented a number of departmental and intergovernmental coordination mechanisms, at the regarding the principle of equality between women and men, such as the Algerian Observatory of Women and the National Council for Family and Women. The latter, established in 2006, is now working in collaboration with the Ministry of National Solidarity, Family and Women's Affairs. However, the impact of the activities of these mechanisms is unclear, including the distribution of tasks and responsibilities between the two departments and institutions, and human and financial resources allocated to different mechanisms. In addition, no central authority has been implemented to coordinate these national mechanisms to help women become autonomous¹⁹⁷.

We should note the lack of services supporting female victims of violence and abuse. Indeed, the number of specialised shelters for women is largely insufficient. The State operates two national shelters for female victims of violence which have a very limited capacity. The other shelters are mostly run by NGOs and lack human and material resources. Law No. 12-06 on associations adopted in January 2012, and the many obstacles to freedom of association contained within it, constitutes an additional barrier for associations¹⁹⁸. For example, they need specific authorisation in order to receive funding from international donors. This law may therefore adversely affect the activities of all organisations working for gender equality or those providing support to female victims of violence¹⁹⁹.

The Algerian State and the Algerian law do not effectively protect the rights of women. Indeed, the legislative framework and practice reveal that many forms of discrimination and many forms of violence against women are committed in violation of the Algerian Constitution and the various international instruments ratified by Algeria.

¹⁹⁶ NADJAH (M.), « Encore une discrimination à l'égard de la femme à Béchar », *El Watan*, 21 March 2012

¹⁹⁷ Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women, Algeria*, 2 mars 2012, CEDAW/C/DZA/CO/3-4, §§ 23 et 24

¹⁹⁸ See Chapter 9 on Freedom of Association and Trade Union Freedoms

¹⁹⁹ Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women, Algeria*, 2 mars 2012, CEDAW/C/DZA/CO/3-4, §§ 19 et 20

Chapter 6 - FREEDOM OF CONSCIENCE AND RELIGION



Article 2 of the 1996 Constitution made Islam the State religion yet Article 36 states that «freedom of conscience and freedom of opinion are inviolable». However, the Constitution does not guarantee freedom of religion or of worship.

At an international level, the freedom of thought, conscience and religion is guaranteed in Article 18 of the ICCPR which states that «Everyone has the right to freedom of thought, conscience and religion», as well as Article 8 of the African Charter on Human and Peoples' Rights which states that «freedom of conscience, the profession and free practice of religion shall be guaranteed. Subject to public order, no person shall be subject to coercive measures to restrict the exercise of these freedoms». Prior to the adoption of Ordinance No. 06-03 of 28 February 2006 setting the conditions and rules of worship other than Islam²⁰⁰, there were only a few scattered laws related to religion. Thus, Articles 3 and 4 of Law No. 63-278 dated 26 July 1963 on holidays recognise that nationals and foreigners of Jewish or Christian faiths have the right to have a break to celebrate their religious holidays. Additionally, Article 160 § 3 of

²⁰⁰ JORA n°12, 1 March 2006, p. 23-25

the Criminal Code punishes the perpetrators of damage, destruction or desecration of «places intended for worship», and Article 160 § 4 punishes the perpetrators of vandalism, destruction or degradation of «monuments, statues, paintings or anything else that may be used for worship purposes”. Similarly, Article 77 of the Law of 3 April 1990 on information punishes «anyone who offends in writing, his image, drawing or any other direct or indirect means, Islam and other divine religions».

Ordinance No. 06-03 defines the conditions and rules for the practice of religious worship for non-Muslims, recalling the constitutional status of Islam. It subjects religious freedom to a system of prior authorisation to the extent that the freedom to practice religious worship is determined by its compliance with the order, the Constitution, other laws and regulations, as well as respect for public order, morality, and the rights and freedoms of others²⁰¹. In practice, this order has allowed the Algerian government to tighten the procedures for the registration of religious organisations, to intensify sanctions against those accused of converting others, to impose restrictions on the import of non-Muslim books and to prohibit public meetings relating to the practice of these religions. This legislation was supported by two implementing regulations. Executive Decree No. 07-135 of 19 May 2007 setting the conditions and procedures for religious events of non Muslim worship²⁰² and Executive Decree No. 07-158 of 27 May 2007 *setting the organisation and working methods of the National Commission for religions other than Islam*²⁰³.

PTTherefore, the existing legal framework (1) and its practical implementation (2) do not guarantee the freedom of religion and conscience.

²⁰¹ Article 2 of Ordinance No. 06-03

²⁰² JORA n°33, 20 May 2007, p. 4

²⁰³ JORA n°36, 3 June 2007, p. 7

1. 1. Violation of religious freedom in legal texts

1.1. Violations resulting from the 2006 Ordinance

1.1.1. The principles

LOrdinance No. 06-03 begins by stating that the practice of religions other than Islam takes place in the framework of religious associations, incorporated under the laws and regulations governing this area. The ordinance provides for the protection and support of the State for religious activity other than Islam²⁰⁴. LThe ordinance, however, contains provisions to end the anarchic activities of associations and people in this area, as well as the act of conversions targeting Muslims.

The term «association» must be interpreted in light of law No. 12-06 *on association*²⁰⁵ which organises procedures for the establishment, organisation and operation of associations. This text repealing Law No. 90-31 of 4 December 1990, sets a system of prior authorisation subject to the issuance of a registration receipt. Law No. 12-06 thus extends – to all the organisations working in Algeria – a system that was previously only reserved for what the legislation subsequent referred to in October 1988 as «*political associations*»²⁰⁶.

Article 3 of Ordinance No. 06-03 guarantees State protection of associations of non-Muslim worship. Article 6 of Law No. 12-06, however, requires a minimum number of 10 founding members for municipal associations and up to 25 founding members for national associations representing at least twelve provinces. These requirements raise serious reservations about the alternatives for non-Muslim believers who are not able to form an association because of their small numbers. The individual's right to freedom of worship of these Algerian citizens who wish to form a religious association is restricted as well as the right to a collective practice of religion under Article 7 of the ordinance²⁰⁷. The wording of this provision seems to exclude the fact that a group of less than fifteen non-Muslim believers can meet freely in private to practice their religion.

²⁰⁴ Article 3 of Ordinance No. 06-03

²⁰⁵ JORA n°02, 15 January 2012, p. 28

²⁰⁶ JORA n°27, 5 July 1989, p. 604, article 11

²⁰⁷ Article 7 of Ordinance No. 06-03 : «*L'exercice collectif du culte a lieu exclusivement dans des édifices destinés à cet effet, ouverts au public et identifiables de l'extérieur*»

Similarly, other provisions of this Act complicate the implementation of the 2006 Ordinance No. 06-03. Thus, Article 2 of Law No. 12-06 of 12 January 2012 on associations limits the action of an association in the way that: *«the purpose and goals of its activities must fall within the general interest and shall not be contrary to the national constants and values and to public order, morality and laws and regulations»*. Indeed, these inane conditions for the formation of associations are unclear and imprecise, and can be arbitrary reasons to restrict the creation of non-Muslim religious groups, especially as Islam is part of the national constants in the official speech.

Furthermore, Article 8 of Ordinance No. 06-03 establishes an obligation that religious events should take place in a building, which means they are not public. In addition, holding religious events is subject to prior authorisation. Regarding the latter issue, the question is whether this system of prior authorisation is a mere formality, or if it is used in a roundabout way by the administration to prevent any religious events. Finally, careful monitoring of these venues is imposed by the lawmaker since *«the buildings intended for worship are subject to a census by the State which ensures their protection»*²⁰⁸.

1.1.2. Criminal provisions

Firstly, the penalties for violating the provisions of Ordinance No. 06-03 are likely to affect the freedom of expression. Indeed, Article 10 of Ordinance No. 06-03 criminalises the *«incitement to resist law enforcement or decisions of the public authority, or tending to encourage some citizens to rebel»* which are punishable with a one to three year imprisonment and a fine of 250,000 to 500,000 dinars when committed by *«a speech given or writing displayed or distributed in buildings where worship is practiced or (...) any other visual means»*. In other words, no criticism is permitted by journalists, which is a violation of the freedom of the press. A more severe punishment is required for men of worship, this criteria being considered as an aggravating circumstance²⁰⁹. The following article agrees with this provision as it punishes anyone who *«makes, stores or distributes printed documents or broadcast films by any media or other means designed to shake the faith of Muslims»*²¹⁰. This undermines not only the freedom of expression but also the right to change one's religion. This right should be guaranteed to every

²⁰⁸ Article 5 § 3 of Ordinance No. 06-03

²⁰⁹ The same Article 10 of Ordinance No. 06-03 requires, in this case, a sentence of three to five years in prison and a fine of DZD 500,000 to DZD 1,000,000. It should also be noted that Article 15 provides for the punishment of legal persons.

²¹⁰ Article 11, paragraph 2 of Ordinance No. 06-03

individual, Muslim or not, under the ICCPR²¹¹, in relation to freedom of thought and conscience.

The measure that undoubtedly brings the hardest blow to other religions in Algeria the one that punishes anyone who «*incites, constrains, or uses means of seduction aiming to convert a Muslim to another religion, or by using for this purpose educational, teaching, health, social or cultural institutions, or any other establishment, or by any financial means*»²¹². Besides the condemnation of conversion, this article fosters confusion between purely social activities or of humanitarian nature²¹³ and interested actions.

In the same vein, Article 12 punishes «with a one to three year imprisonment and a DZD 100,000 to DZD 300,000 fine anyone who has a collection or accepts donations without the permission from the legally entitled authorities».

Once it has been approved, the association may receive real estate and assets free of charge or at a fee, donations and bequests, «*for the conduct of its activities as provided for by its statutes*»²¹⁴. However, State control over the associations' resources remains strong to the extent that «*outside the duly established cooperative relations, it is prohibited for any association to receive funds from foreign legations and non-governmental organisations. This funding is subject to the prior approval of the competent authority*»²¹⁵. But the question as to what criteria the «*competent authority*»²¹⁶ determines is the necessary the amount to raise from collections and budgets for a religious community remains unanswered.

Finally, Article 14 provides heavy financial and custodial penalties and deprive freedom in response to the prohibition set in Articles 5 and 7 of Ordinance No. 06-03 to conduct any activity contrary to the nature and objectives of the worship in the locations intended for this exercise and the exercise of collective worship outside the buildings intended for this purpose,

²¹¹ See in particular General Comment No. 28 of the United Nations Committee of Human Rights under Article 3 of the International Covenant on Civil and Political Rights (Equality of Rights between Men and Women), 29 March 2000, CCPR / C/21/Rev.1/Add.10, § 21

²¹² Article 11, paragraph 1 of Ordinance No. 06-03 provides a prison sentence of two to five years and a DZD 500,000 to DZD 1,000,000 fine.

²¹³ This article may mean that in event of a Christian humanitarian aid (Algerian or foreign), for example due to a natural disaster, donations will be rejected by the Algerian families or associations in the absence of official public approval.

²¹⁴ Article 17 of Law No. 12-06

²¹⁵ Article 30 of Law No. 12-06

²¹⁶ Article 9 of Law No. 12-06: the President of the People's Municipal Assembly, the Governor or the Minister of the Interior

open to the public and identifiable from the outside. It should be remembered that these sanctions, according to the formula used by the ordinance, remain «without prejudice to more severe penalties»²¹⁷ which are meant for other repressive measures. While some aspects of these provisions have sparked interrogations, they were dispelled by a strict legal interpretation.

1.2. Restrictions of religious freedom in the implementing decrees

1.2.1. Decree of 19 May 2007 setting the conditions and procedures of religious events of non Muslim worship

The Executive Decree No. 07-135 of 19 May 2007 setting the conditions and procedure of religious events of non Muslim worship²¹⁸, was adopted to clarify the applicability of Article 8 of the 2006 Ordinance. This bill begins by defining the religious event as «a temporary gathering of people organised by religious associations in buildings accessible to the public»²¹⁹, to then subject this to a «preliminary statement to the Governor»²²⁰, at least five days before the date set for the event. Thereafter, the decree states that «the organisers must present this receipt to the authorities whenever requested»²²¹, which is a clear measure of controlling the course of these religious events, in addition to the right of the Governor to ask, within the forty-eight hours of the filing the declaration, the organisers to change the event's venue²²², or even prohibit any event that would constitute a danger for the preservation of the public order²²³. But these restrictions are even more blurred given that the notion of public order or the circumstances in which a particular event may enter into this framework are not specified.

1.2.2. Decree of 27 May 2007 setting the operation measure of the National Committee of faiths other than Islam

Regarding the conditions to exercise religious worship itself, Article 9 created under the aegis of the Ministry of Religious Affairs and Wakfs²²⁴, a national faith committee responsible in particular

²¹⁷ Article 11 of Ordinance No. 06-03

²¹⁸ JORA n°33, 20 May 2007, p. 4

²¹⁹ Article 2 of Executive Decree No. 07-135 of 19 May 2007

²²⁰ Article 3 of Executive Decree No. 07-135 of 19 May 2007. It is important to note that the official text of the decree, as published in the JORA requires the declaration «of» and not «to» the Governor.

²²¹ Article 4 of the Executive Decree No. 07-135 of 19 May 2007

²²² Article 5 of the Executive Decree No. 07-135 of 19 May 2007

²²³ Article 6 of the Executive Decree No. 07-135 of 19 May 2007

²²⁴ Pious legacy, pious foundations

for «ensuring the free exercise of worship; supporting affairs and concerns related to the practice of faith; providing notices prior to the approval of religious associations». This jurisdiction, whose composition and operating procedures are established through regulation²²⁵, puts into perspective the principle of freedom previously announced. In this respect, in addition to its lack of independence, it is important to note the generality and vagueness of the ambiguous terms of its missions. What exactly does supporting the affairs and concerns about the practice of faith actually mean? In addition to this, the requirement of a notice from this commission before the approval of religious associations is particularly worrying and means additional authorisation conditions prior to the establishment of such associations. Indeed, the binding nature of such consultation, a priori mandatory is not clear and would carry serious consequences. What finally remains to do is determine the criteria on which the committee will build its decision to grant or not its approval to communities wishing to form an association. There is no mention of this issue in the decree²²⁶.

These bills, which are supposed to explain the 2006 decree, do not explain all of the inaccuracies. This is a regrettable shortcoming considering the heavy penalties provided by the ordinance. Algeria has indeed adopted a legislation that undermines one of the most important and basic rights, with legal provisions that are accompanied by an assortment of criminal provisions²²⁷, which are already implemented in trials. The compliance of this legislation with the Algerian Basic Law and Algeria's international commitments is questionable.

2. Violation of religious freedom in practice

2.1. Converting

Practice has demonstrated that under Ordinance No. 06-03 relating to the practice of faiths other than Islam, it is not possible for a non-Muslim to receive Muslim friends at home or meet with them in a public place and discuss issues relating to religion. The provisions of Article 11

²²⁵ Executive Decree No. 07-158 of 27 May 2007 setting the organisation and working procedures of the National Commission of worships other than Islam, JORA No. 36, 3 June 2007, p. 7-8. The organisation of this commission raises a problem because no representative of non-Muslim communities serves in it: According to Article 4, paragraph 1 of this Order, «The Commission, chaired by the Minister of Religious Affairs and Wakf or his representative is composed of representatives of the Minister of National Defence, of the Minister of the Interior and Local Collectivities, the Minister of Foreign Affairs, the Directorate General for National Security, the Gendarmerie Command, the National Consultative Commission for the protection and promotion of human rights.» However, the second paragraph does not exclude «calling upon the representative of any religion whose presence is considered as necessary».

²²⁶ Article 9 merely states that «(...) The opinions of the Commission relating to the approval of religious associations and the allocation of the buildings are reported to the appropriate authority within a period not exceeding a month after its entitlement.»

²²⁷ Chapter III entitled «Penal Provisions» of Ordinance No. 06-03 of 28 February 2006

paragraph 1²²⁸ aimed at preventing a Muslim from converting to another religion, while this approach is not seen as a personal conviction. In practice, people who have converted are subject to political demonisation. Thus, prosecutions and convictions for converting are common. Karim Siaghi, 30, converted to Protestantism in 2006. He was convicted in the first instance on 5 May 2011 by the court of Oran to 5 years in prison and a DZD 200,000 fine for acts of «conversion» and for having «insulted the Prophet Muhammad» under the provisions of the Penal Code (Article 144 § 2). This conviction was based on his neighbour's testimony who filed a complaint against him after Karim Siaghi gave him a DVD about Jesu²²⁹.

Karim Siaghi appealed the judgement. Originally scheduled for 19 November 2011 and then for 1 December 2011, the trial was again postponed for «further investigation». It was only a year later, on 19 November 2012²³⁰, that Karim Siaghi was summoned by the Counsellor at the Criminal Chamber of the Court of Oran where he confronted his accuser for the first time. Since the hearing, the date of the next hearing for the appeal has yet to be decided. Karim Siaghi is still waiting for the final ruling.

On 23 January 2013, Ibouène Mohamed, a Christian, was sentenced to one year in prison and a fine of DZD 50,000 dinars for talking about his faith at his workplace. Originally from northern Algeria, he worked for a multinational company based in Tindouf, in southern Algeria. During a conversation with a colleague the subject turned to faith. It was after this conversation that his colleague pressed charges against him, accusing him of trying to convert him to Christianity²³¹. On 13 February 2013, the court of the Bechar province, in western Algeria overturned Ibouène Mohamed's prison sentence but doubled the fine from DZD 50,000 to DZD 100,000.

2.2. Violation of Islam's principles

Like all converts, those accused of violating the principles of Islam are subject to demonisation. This is the case of non-fasters, the prosecuted and the convicted on the basis of the first paragraph of Article 144 a 2 of the Penal Code, inserted by Law No. 06-23 of 20 December 2006, which states: «sentence to prison for three to five years and fine from DZD 50,000 to DZD 100,000 or

²²⁸ Article 11: « Sans préjudice des peines plus graves, est puni d'un emprisonnement de deux (2) ans à cinq (5) ans et d'une amende de 500.000 DA à 1.000.000 DA quiconque : 1 - incite, contraint ou utilise des moyens de séduction tendant à convertir un musulman à une autre religion, ou en utilisant à cette fin des établissements d'enseignement, d'éducation, de santé, à caractère social ou culturel, ou institutions de formation, ou tout autre établissement, ou tout moyen financier»

²²⁹ MEDHI (B.), «La date du procès pas encore fixée», *El Watan*, 25 November 2012

²³⁰ LOUKIL (D.), «Affaire Karim Siaghi. Un nouveau procès en perspective», *Liberté*, 20 November 2012

²³¹ «Algérie: Condamné à un an de prison pour «prosélytisme», *Portes ouvertes*, 6 février 2013

one of these penalties, anyone who offends the Prophet (peace be upon him) and messengers of God or denigrates the dogma or principles of Islam, whether by way of writing, drawing, making declarations or by any other means». Nothing in the law states that the fact of not fasting during the month of Ramadan is an insult to the Prophet or derogatory to the dogma or principles of Islam.

The use and extensive interpretation of the article is therefore contrary to the principle of legality of offenses and penalties guaranteed under domestic law notably Articles 46, 140 and 142 of the Constitution, and Article I of the Penal Code. It is also contrary to the freedom of conscience and religion, which includes the right to either not be religious or to be non-practising.

For example, on 8 November 2010 the Akbou Misdemeanors Prosecutor asked for eight non-fasters from Ighzar Amokrane to be given prison sentences of two to five years for «breaching the principles of Islam». The judge refused to follow the charge and ordered, for his part, their release. This trial occurred after that of two other non-fasters, Hocini Hocine and Salem Fellak, who were finally acquitted by the court of Ain El Hammam Kabylie²³². These trials mobilised Human rights defence organisations and all activists for the defence of individual and collective freedoms, in the name of freedom of conscience enshrined by the Constitution. On 18 October 2010, however, Farès Bouchouata was sentenced by the court of Oum El Bouaghi to two years in prison and a fine of DZD 100,000 for «breaching the principles of Islam» after breaking the fast. The young people arrested for the same charges in Ain El Hammam had been acquitted by the court who recognised that there was no legal provision in the Organic Law and the Code of Criminal Procedure, criminalising the non-observance of fasting²³³.

In 2012, nearly one hundred and seventeen non-fasters were arrested²³⁴. On 8 August 2012, for example, the Christian Lebanese singer Yara was arrested in the city of Chelghoum Laid in the Mila province by police for failing to comply with Ramadan even though she was smoking a cigarette whilst driving a car²³⁵.

²³² BELMADI (T.), «A Oum El Bouaghi, la justice a la main lourde contre un non-jeûneur», *DNA*, 22 October 2010

²³³ BERBICHE (O.), «Clarification», *El Watan*, 9 November 2010

²³⁴ SELLAL (N.), ARDJOURM (S.), «Monde musulman; le calvaire des non-jeuneurs», *El Watan*, 10 August 2012

²³⁵ BOUDJEMELIENE (W.), «La star libanais «Yara» arrêtée à Mila pour non observation du jeûne», *Echourouk*, 8 August 2012

2.3. The administrative control

Christian locations of worship have long been closed²³⁶ preventing several communities from meeting. These communities cannot organise their weekly worship because of the notifications of closure sent by the prefecture, sub-prefectures and the police. One example is the order signed on 8 May 2011 by the Governor notifying the «permanent closure» of seven Protestant churches in the province of Bejaia. The reason given in a letter dated 22 May 2011, by the head of the police of the Bejaia province, is the illegal act of «any building dedicated or [being] dedicated to the practice of non-Muslim worship without authorisation». This measure was lifted a few days later by the Governor, who met the President of the Protestant Church in Algeria (which represents about thirty places of worship in the country). Likewise in Mostaganem, a building has been kindly made available to the Mostaganem health centre from 1976 by the Protestant Church of Algeria. The Protestant Church of Algeria should have recovered the building after the health centre moved location in January 2012. But the prosecutor of the court of Mostaganem has ordered the closure of the building²³⁷, even though the president of the church confirmed that they had the deeds to the building. The president then decided to go to court and a complaint was filed. The matter was also brought before the Ministry of Religious Affairs.

Moreover, the authorities closely monitor all communities. Church leaders regularly file the status of their communities expecting an official «authorisation to exist». However, the administration, namely the Regional Administrative Officer, only accepts the submission of the application after those involved have been dedicated for a long time and uses delaying tactics claiming to need to refer the matter to the Ministry of Religious Affairs in Algiers. The authorities require communities to cease their activities, to put their papers in order, without ever providing clear information on the process to follow. Furthermore, visas are denied to priests, and religious congregations and Protestant pastors are expelled. The stated goal is to «put an end to the anarchic activities of associations and people in this area and to activities of conversion conducted in Muslim areas in Algeria²³⁸. Confronted by this controversy²³⁹ and the degradation of Algeria's image

²³⁶ BBOULQAM (A.), «Réouverture de 22 églises non autorisées en Algérie», *Echorouk*, 22 April 2009

²³⁷ DUMEZ (H.-G.), « Les protestants algériens dénoncent la spoliation d'une église », *La Croix*, 19 June 2012

²³⁸ The Head of State specifically stated that «Algeria enacted the legislation that has been discussed: its aim is to continue this tradition of friendliness and mutual respect between the followers of the religions of the Book, but also its determination to protect Islam, the religion of the state from practices, which are unfamiliar to the traditions of the Christian Church in Algeria. True to its traditions and committed to a productive dialogue between religions and civilizations, Algeria is also determined to put an end to the anarchic and sometimes, mercantilist practices that assault the Muslim citizens in their faith» in the Council of Ministers. The Charter for Peace, the practice of religion and the military status» *Le Quotidien d'Oran*, February 28, 2006

²³⁹ Including internally. Akef (A.), «Algerian intellectuals are concerned about the violations of the freedom of

abroad, and to refute the charge of a campaign of persecution against Christians, the Algerian authorities say that this is just a generalisation of a policy applied primarily to Islam.

Confirmation of the State's unjustified interference in the Muslim faith can be found in the Minister of Religious Affairs' call to Imams to preach in favour of voters' participation in the presidential election of April 2009. The Minister, in fact, argued that *«The call for participation in the upcoming elections falls within the scope of duties and prerogatives of the mosque. So we believe that Imams are the heirs of the mujahedin [Muslim soldiers] and the shahid [martyrs]. The mosque is inseparable from the Algerian State as well as from other State institutions. Given their function, Imams do not represent any political party. They shall not, at any time, publicly display their political affiliation. As citizens, they have the freedom of choice on the day of the vote»*. The Minister has also urged Imams to *«thwart any attempt aiming at diverting the mosque from its role and making it a place for political or ideological propaganda that has no relationship with the legal role of religious and educational institutions» and to be vigilant of "foreign campaigns aiming to destabilise the unity of Algerians»*²⁴⁰. The current practice of religious freedom reflects both the intolerance towards religions other than Islam as well as the manipulation of Islamic places of worship by the regime to serve their propaganda.

These developments make it necessary to conclude that in the field of religion, the freedom of expression ends where the threat or the real or implied questioning of the principles of Islam begin²⁴¹, Attacks on the freedom of opinion are numerous, given that the implementation of the 2006 ordinance results in the prohibition of expressing an opinion that does nothing but displease the public authorities.

conscience», *Le Monde*, 8 November 2008: Following a conference held on 13 October 2008, with the Syrian poet Adonis in the Algerian National Library (BNA) the director and writer Amin Zaoui, was dismissed from his library director post. The poet criticised «the institutionalisation of Islam» in the Arab countries and the non-recognition of an independent legal existence to women. Islam, he said, as practiced today, has ceased to be a «spiritual experience» to become a simple law on «how women should dress, how to perform the prayer (...). Islam, no longer, addresses the heart and spirit.»

²⁴⁰ BOUSMAHA (A.), «Ghلامallah annonce l'installation prochaine d'un mufti de la République. Les mosquées mises à contribution pour les élections», *Liberté*, 28 February 2009

²⁴¹ LOUNES (S.), «Évangélisation en Kabylie. Danger ou phénomène marginal?», *El Watan*, 26-27 July 2004

Chapter 7 - FREEDOM OF ASSEMBLY AND PEACEFUL DEMONSTRATIONS



Under Article 41 of the Constitution, «The freedoms of expression, association and assembly are guaranteed to citizens». The Law No. 91-19 of 2 December 1991, which amends and supplements Law No. 89-28 of 30 December 1989²⁴² regulates the implementation of these freedoms.

At an international level, the freedom of assembly and peaceful protest is enshrined in Article 21 of the ICCPR²⁴³, Article 20 § 1 of the ACHPR²⁴⁴, both ratified by Algeria. Under Article 21 of the ICCPR, exercising the right to peaceful assembly can be restricted but the restrictions must satisfy three conditions. Firstly, they must be prescribed by law; secondly, they must pursue one of the purposes authorised by Article 21, namely the interest of national security, the preservation of public safety, of public order, the protection of health, of public morality or the protection of others' rights and freedoms. Thirdly, the Covenant requires that restrictions must also be necessary in a democratic society, which leads to imposing a proportionality criterion between the restriction and goal. For several years, public authorities have been evoking a Government Council's decision dated 18 June 2001 to justify a general ban on demonstrations in the streets of Algiers. However, this decision has never been published in the Official Journal or on the Prime Minister Services website. Moreover, this ban applies in practice to all provinces of the country.

There is nothing in the Algerian law or in international laws that allows the suppression of the freedom of peaceful assembly in the streets. In other words, this general ban has no legal basis and can in no way be justified by any Algerian and international legal bill. The lifting of the state of emergency on 23 February 2011 did not bring any improvement in the exercise of freedom of assembly and demonstration²⁴⁵ whether in the streets or in enclosed spaces.

Such was what Mr. Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, observed during his visit to Algeria from 10 to

²⁴² Article No. 91-19 of 2 December 1991 amending and supplementing Law No. 89-28 of 31 December 1989 on public meetings and demonstrations, OFFICIAL JOURNAL No. 62 of 4 December 1991

²⁴³ Article 21 of ICCPR: «*Le droit de réunion pacifique est reconnu*»

²⁴⁴ Article 20 § 1 of the ACHPR: «*All peoples shall have the right to existence.*»

²⁴⁵ See chapter 1 on the formal lifting of the state of emergency; see also: EMHRN, *Levée de l'état d'urgence en Algérie, un trompe l'oeil. L'exercice des libertés d'association, de réunion et de manifestation en Algérie, January 2012*

17 April 2011. In his report, he did not fail to welcome the lifting of the state of emergency, all the while regretting, however, the ongoing restrictions on the exercise of freedom of assembly and demonstration. The Special Rapporteur regretted the existence of «*arbitrary and oblique practices*»²⁴⁶ contributing to the violation of the rights to the freedom of assembly and demonstration.

Regardless of the general ban on protests in the streets, which is arbitrary, the Algerian law governing the exercise of the freedom of peaceful gathering is itself restrictive. As noted by the Special Rapporteur of the United Nations, the law does not meet the requirements of international law in this matter, notably Article 21 of the ICCPR, above the laws under the Algerian Constitution. One of the main problems resulting from the law itself is that it provides an authorisation system that is restrictive by nature. That is why the Special Rapporteur has expressed his support for a system of simple declaration of public meetings and demonstrations to replace the current authorisation system.

In addition, persons seeking permission to hold public meetings are confronted by the arbitrariness of the administration. Indeed, the administration's refusal of public meetings and peaceful demonstrations are innumerable, and intervene in an arbitrary manner as they are generally neither based on the law nor are justified. The first victims of these practices are the independent actors of the civil society, such as independent unionists, strikers, defenders of Human rights, the families of the disappeared whose right to freedom of assembly (1) and demonstration (2) is routinely hindered.

1. The restrictions on freedom of assembly

1.1. The legislative framework

Under Articles 4 to 6 of Law No. 91-19, holding public meetings is subject to a declaratory scheme. The declaration must be made through the territorially competent administrative authority, usually the Governor, at least three days prior to the meeting. In principle, the administration should immediately give a receipt to the organisers attesting that they had made the declaration. A first restriction is set in Article 4 on the people who can make the declaration, since the latter must be «signed by three persons domiciled in the province and enjoying their civil and civic rights». Specifically, an Algerian citizen may only hold a public meeting in the province in which

²⁴⁶ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Mission to Algeria, 12 June 2012, A/HCR/20/17, p. 18

he resides and he is forbidden by law to do so in any of the other 47 provinces! In other words, when it comes to organising a peaceful assembly, the Algerian citizenship no longer exists; there is only provincial citizenship!

Furthermore, Article 6a provides a restriction on the freedom of assembly by stating, without further clarification, the Governor may prohibit the holding of a public meeting «just by informing the organisers that it proves that it poses a real danger of disorder for public order or if it clearly appears that the real purpose of the meeting is threatens the maintenance of public order». The law does not require the Governor to justify his decision in his refusing to authorise the gathering by concretely stating, on one hand, the reason for which the gathering was not authorised, what the real risks of disorder would be and the reasons for which the real purpose of the meeting would be, different from what the organisers presented and, on the other hand, why it would be a danger to maintaining public order. This lack of duty to provide a reason leaves the way wide open for arbitrariness as the Governor does not have to justify his rejection of the request other than by making a sweeping reference to the protection of the public order.

Article 9 of Law No. 91-19 states that «it is forbidden in any meeting or protest to oppose the national constants, and detract from the symbols of the revolution of 1 November, public order or morality». This article is an unjustified interference with the freedom of expression. Indeed, the wording is vague, especially when it comes to national values and morality. They are left open to the interpretation of the public authorities, thus promoting an arbitrary use. The law allows the authorities to ban or stop protest assemblies or even critiques of the system and the policies currently in place. Many sections of the law, however, use these misleading terms, which serve as a pretext for many police interventions and many bans.

The organizers may face more specific restrictions. Thus, Article 8 restricts where meetings can take place: «public assemblies cannot be held in a place of worship or a public building not intended for this purpose. Public assemblies are forbidden in public streets». Thus, in practice, an electoral meeting cannot take place at Place des Martyrs (Martyr's Square) in Algiers just as a public cultural gathering cannot...

1.2. Arbitrary practices of the authorities

The practices of the public authorities reveal that the conditions of law, which are already restrictive, are not observed. Thus, the arbitrary banning of public meetings near systematically befalls the autonomous trade unions and organisations of Human rights.

First of all, the receipt confirming the organisation's declaration of a meeting is, in practice, never issued and the ban is notified to the organisers the day before the gathering and sometimes on the same day without justification if the reason behind it is very vague. Confronted by this situation, independent activists of the civil society, such as independent trade unions, human rights associations and victims of human rights violations cannot contest these decisions. They are forced to hold public meetings almost underground to avoid being banned. In order to be able to hold meetings, the organisers are forced to organise these gatherings as discreetly as possible, which means finding available rooms without providing a receipt, but also exercising a considerable amount of energy for a result which is eventually undermined by the constraints imposed by the authorities. It happens then that meetings are finally authorised, but that the organisers are informed at the last minute, making the logistics and communication concerning the event extremely complicated and thus reduce its presence.

In response to the unjustified ban on protesting in the streets, authorities sometimes offer to provide the organisers with facilities to hold their meetings. This was the case during the march organised by the National Coordination for Change and Democracy (CNCD) on 12 February 2011 in Algiers or in the march organised by CNCD-Oran in Oran on 5 March 2011. In both cases, the organisers refused the authorities' proposal and kept the gatherings planned in the street.

Finally, the authorities used various means of intimidation to prevent civil society from assembling. On 23 March 2012, for example, the National Council for the Rights of Victims of the Algerian Civil War has been banned from holding a press conference on their position on the legislative elections of May 2012²⁴⁷. Even though the meeting began in a hotel in Baraki, in the province of Algiers, the Benrabah Jamil, president and spokesperson of the Council, was forced to stop immediately because the owner of the establishment has been instructed by security services to put an end to the meeting.

2. Freedom of demonstration

2.1. The legislative framework

Public demonstrations are subject to prior authorisation²⁴⁸, which must be addressed to the

²⁴⁷ BOUFATAH (M.), « Les victimes du terrorisme préviennent, il n'existe pas d'islamisme modéré », *L'Expression*, 25 March 2012

²⁴⁸ Article 15 of Law No. 91-19 of 2 December 1991

Governor at least eight days before the date set for the conduct of the event²⁴⁹. Any event occurring without permission is considered a mob²⁵⁰ and organisers and participants face a prison sentence of three months to one year and/or a fine of DZD 3,000 to DZD 15,000²⁵¹. These penalties also apply if they do not comply with Article 9 of the law, which «prohibits in any public meeting or demonstration the opposition of the national constants» and “damage of the symbols of the revolution of 1 November, the public order and morality». Article 97 of the Criminal Code prohibits «in the streets or in a public place: [...] any unarmed mob which may disturb the public peace.»

In addition, public authorities always base their actions on the Government’s decision from 18 June 2001 which prohibits the organisation of peaceful protests in the capital, even though the decision is untraceable and the lifting of the state of emergency was announced. Moreover, this decision would only apply in principle to the city of Algiers, when in reality the events are almost always forbidden, repressed or broken up in other cities.

Finally, the Charter for Peace and National Reconciliation and its implementing regulations are also used to restrict the right to freedom of expression and assembly. Article 46 of Ordinance No. 06-01, provides for a prison sentence for «any person who, by speech, writing or any other act, uses or exploits the wounds of the national tragedy [...] to harm the reputation of its agents who served honourably or to tarnish the image of Algeria at an international level». The negative effects of the Charter on the Exercise of Freedom of Expression and Assembly are very real. Protests led by families of the disappeared are systematically repressed by the police²⁵².

In practice, the Algerian authorities do not bother with the law to restrict the freedom of peaceful demonstration. They cite security arguments to justify these human rights abuses.

The Minister of the Interior and of Local Government, Daho Ould Kablia, told the press regarding the organisation of a big march on 12 February 2011 by the CNCD in Algiers that «marches are banned in Algiers, not because it is the RCD or the coordination who called for marches. We have not banned the march of the RCD, but all the marches in Algiers. [...]. No party, no association can control a march, can ensure that it takes place in a peaceful manner. [...] If we mobilise the security means to control a march or any event, we will do it at the expense

²⁴⁹ Article 17 of Law No. 91-19 of 2 December 1991

²⁵⁰ Article 19 of Law No. 91-19 of 2 December 1991

²⁵¹ Article 23 of Law No. 91-19 of 2 December 1991

²⁵² See Chapter 4 on Enforced Disappearances

of the fight against terrorism. [...] You have to imagine that in such event, the situation is out of control and no citizen is safe»²⁵³. As in other areas, the Minister of the Interior reflects the very particular conception that the State's regime has, by making the citizens rather than the government services responsible for security. It is the State's duty to provide citizens with a peaceful enjoyment of their basic rights and civil liberties by allocating security forces properly, not by banning demonstrations on public roads under the pretext of fighting against terrorism; a pretext never used when it comes to sport events which can, however, gather tens of thousands of people at once in the same place where they can be targeted by a terrorist attack. At the same time, violence in stadiums and outside the stadiums is a real scourge in Algeria, which makes many citizens avoid the areas around the stadium on match days. Finally, the fight against terrorism is not within the powers of the aptly named «*anti-riot*» police units.

In the field of freedom of peaceful assembly, the regime does not limit itself to restrictive laws that they do not even observe. They prefer arbitrariness that characterises their work in the field of civil liberties as well as justifications that insult the Algerian intelligence.

2.2. The repression of demonstrations

The authorities use arbitrary practices to prevent meetings from being held and people from using public space. Public demonstrations are banned and thus systematically repressed. In 2011, a particularly important year in the context of the Arab Spring revolutions, many peaceful demonstrations were held in Algiers and Oran. On one hand, the claims were political, like the lifting of the state of emergency, the respect for civil liberties and democracy, and on the other hand calling for social justice. The social claims have been growing since then and relate to a greater variety of subjects, ranging from the cost of living to access to housing. These protests, which were sometimes attended by thousands of people, were violently suppressed and broken up. They were held in an atmosphere of tension and under strict police surveillance. Thus, upon their arrival to the area, demonstrators were surrounded by security forces to act as a deterrent. Faced with the protestors' refusal to disband, the police did not hesitate to use violence and arrested people.

On 12 April 2011, a few events organised by the student movements in Algiers, were able to successfully avoid police repressed by a few hundred metres and were able to take place. However, they did not take place again as they were prevented by the constant impressive

²⁵³ A.O. et N.H. «Exclusif : Le ministre de l'intérieur et des collectivités locales à Liberté Daho Ould Kablia : «L'État doit être fort, mais juste»», *Liberté*, 30 January 2011

presence of the police. Generally speaking, from January 2012, the repressive policy against demonstrators was hardened. Requests for permission to protest were systematically denied. For example, members of the Algerian Anti-Corruption Association (AALC) submitted six applications in six different provinces to organise a public demonstration on the occasion of the International Day against Corruption, but all of them were denied.

Protest movements were systematically broken up with violence. An increasing number of police acts of violence have been observed as well as arrests, often followed by indictments and even convictions. This is the case of the protest movement organised by the National Committee for the Defence of the Rights of the Unemployed in Laghouat where the police did not hesitate to use tear gas and violence, and arrested twenty-five people²⁵⁴. The protestors were just calling for the list of social houses recipients to be cancelled because of irregularities in their allocation.

In the morning of 26 February 2012 during a sit-in, forty trade unionists from the Committee on Pre-employment and the Social Net affiliated with the SNAPAP, claiming rights for unemployed and workers in insecure work near the Press House in Algiers were arrested. They were released in the late afternoon without any charges being brought against them. Among them were Malika Fallil, President of the Committee on Pre-employment and the Social Net, and Tahar Belabbes, spokesman for the CNDDC²⁵⁵. On 14 March 2011, Dalila Touat, a 35 year old unemployed graduate, and member of the CNDDC was arrested by the police in Mostaganem and was summoned to appear before court for inciting an unarmed demonstration by distributing leaflets even though the leaflets were not about the organisation of a demonstration, but about the Committee's activities. Her arrest was widely publicised. After a strong mobilisation, Dalila Touat was finally acquitted on 28 April 2011.

On 19 March 2012, a group of young Algerians launched an appeal via Facebook for «*a march of the Algerian youth*» which was planned to go from the Grande Poste Square to the Presidential residency. On the anniversary of the cease-fire, marking the end of the war of liberation, the demonstrators wanted to express their desire to see change in the regime and the establishment of democracy. An impressive number of police forces were put in place to prevent the march from taking place. Upon their arrival at the Grande Poste Square at around 9 am, the protestors found that agents of anti-riot brigade, the Mobile Brigade of the Judicial Police (BMPJ) and even the Research and Intervention Brigades (BRI) specialising in high-risk

²⁵⁴ GUENANFA (H.), « Au moins dix personnes ont été blessées : Laghouat : les forces de l'ordre accusées de comportements violents », TSA, 10 January 2012

²⁵⁵ Joint press release of the FIDH, OMCT, EMHRN, *Le harcèlement de syndicalistes et l'interdiction de manifester se poursuivent en Algérie, malgré la levée de l'état d'urgence*, 2 March 2012

operations, had been deployed throughout the neighbourhood²⁵⁶. Barely twenty protestors were present. One of the organisers told magazine *Jeune Afrique* that: «*Since the launch of our initiative on Facebook, we have been accused of being agents on the authorities' payroll or even activists in political parties. Some have even accused us of being comfortably settled abroad, particularly in France*»²⁵⁷. The demonstrators have found themselves completely paralysed by the police with sixty agents for each demonstrator. On Monday 2 April 2012 in Algiers, six members of the MJIC were arrested whilst distributing leaflets calling for the boycott of the People's National Assembly elections on 10 May 2012. A journalist working for ARTE was also arrested. Four members of MJIC and the journalist from ARTE spent several hours at the police station down Cavaignac Street before being released²⁵⁸.

On 14 April 2012, twenty-five activists and supporters of MJIC were also arrested and detained at the Cavaignac Street police station for taking part in a rally calling for the boycott of the People's National Assembly elections due to government practices contrary to democratic principles and social justice²⁵⁹. Members of SOS Disappeared including Fatima Yous, 78 year-old president of the organisation, Djedjigua Cherguit, Hacene Ferhati and Slimane Hamitouche, who were near the place of gathering but were not participating, were also arrested and taken to the station. They spent several hours without being charged simply because they are known to the police for their participation in all SOS Disappeared demonstrations.

On 5 July 2012, as part of the fiftieth anniversary celebrations of Algeria's independence, the CFDA, SOS Disappeared and the CNDDC wanted to celebrate the event in a peaceful gathering at the Place du 1er Mai in Algiers, to commemorate the memories of their family members and to denounce the numerous violations of human rights which continue to be committed in Algeria. The police immediately came and were particularly violence. Several demonstrators were beaten and thrown to the ground, among them elderly and vulnerable women²⁶⁰. The police then broke up the gathering by arresting people. Four relatives of the disappeared: Hacene Ferhati, Slimane Hamitouche, Youcef Kyzra and M'barek Hamdan and about fifty unemployed members of the CNDDC were arrested and taken to the police station

²⁵⁶ Human Rights Watch Press release, *Algeria: Les autorités doivent mettre fin à l'interdiction de rassemblement à Alger*, 20 March 2011

²⁵⁷ BEY (A.), « *Algérie : rencontre avec les organisateurs de la «marche des jeunes» du 19 mars* », *Jeune Afrique*, 17 March 2011

²⁵⁸ FAYCAL, « *Press release : Le MJIC dénonce l'arrestation de ses militants* », *Algérie Focus*, 6 April 2012

²⁵⁹ Joint press release of the FIDH, OMCT EMHRN, *Algérie : Le harcèlement de ceux qui luttent pour les droits de l'Homme doit cesser !*, 5 March 2012

²⁶⁰ CFDA press release, *Les autorités algériennes empêchent les familles de fêter l'indépendance en commémorant leurs enfants*, 5 July 2012, available on the website of the CFDA: www.algerie-disparus.org

before being released during the afternoon. Following this new escalation of violence against relatives of the disappeared, the CFDA issued an urgent appeal²⁶¹.

On the occasion of the sixty-fourth anniversary of the Universal Declaration of Human Rights and the International Day of Human Rights on 10 December 2012, the families of the disappeared organised rallies. In Algiers, the event which was originally scheduled at the headquarters of the CNCPPDH was violently broken up by the police. The demonstrators were violently shoved by the police while out of the fifty demonstrators present, the majority of them were elderly relatives of missing people. Hacene Ferhati was violently manhandled and fell to the ground before fainting. In Oran, a large number of police officers surrounded the courthouse where families gathered to prevent them from approaching. On this occasion, the Algerian youth movement Youth Action Coalition (RAJ) also organised a distribution of leaflets at Place Audin in Algiers, to recall Algeria' commitments in the field of human rights and to raise awareness. Less than an hour later, while the exchanges between activists and bystanders were taking place peacefully, the police arrived in a police van and arrested three organisers of the event²⁶².

Since January 2013, the social unrest has increased in the south (El-Oued, Ghardaia, Hassi Messaoud, Laghouat Ouargla) and the numbers of unemployed demonstrations have increased. This protesting has been systematically suppressed by the police. They deploy and carry out violent arrests of peaceful demonstrators who are simply asking for a job. Lawsuits are being routinely brought against them for «*unlawful gathering*», «*disturbing the public order*», «*inciting a mob*», «*insulting a policeman*». Thus, three unemployed people were sentenced to imprisonment and others received suspended sentences following a peaceful gathering outside the employment agency. Other activists who took part in demonstrations are subject to judiciary harassment²⁶³.

On 10 January 2013, nineteen unemployed people who were holding a peaceful rally in front of the National Well Engineering Company (ENTP), at Hassi Messaoud, were arrested. The aim of the protest was for the unemployed to denounce the company's recruitment which, according to them, is illegal²⁶⁴. On 24 January 2013, a march of unemployed people was scheduled to

²⁶¹ CFDA, *Demande d'intervention urgente pour les familles des disparus de l'Algérie*, An urgent call sent to the Special Rapporteur on Enforced or Involuntary Disappearances, to the Special Rapporteur on the situation of human rights, to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, to the Special Rapporteur of ACHPR, and to the Special Rapporteur on Freedom of Expression and Access to Information in Africa, 13 July 2013

²⁶² M. B., « Des militants du RAJ arrêtés par la police », *El Watan*, 11 December 2012

²⁶³ Cf Chapter 3 on Judiciary System

²⁶⁴ SELLAL (N.), « Ouargla : 19 chômeurs devant le procureur de la République », *El Watan*, 11 janvier 2013

take place in Hassi Messaoud. But once arrived at a police checkpoint, the protesters were stopped by the security forces. Agents of the National Security Corps (CNS) were also there in anti-riot trucks to prevent demonstrators from bypassing the checkpoint. Having arrived at around 1 pm, the demonstrators were stuck there until 3 pm before being forced to turn back²⁶⁵.

On 8 March 2013, SOS Disappeared called for a peaceful rally to commemorate the International Women's Day. The people who came to support their activists, such as the members of the RAJ Association, Amnesty International and members of SOS Disappeared, one of whom was an elderly eighty-five year old, were arrested by the police and spent the entire day at the police station. Finally, the authorities have repeatedly prevented the mobilisation of activists in social forums and have attempted to isolate and weaken the Algerian civil society. In February 2013, the Maghreb Forum for the Fight Against Unemployment and Temporary Work was banned and participants who had come over from abroad were arrested before being deported.

In late March, the border police prevented ninety-six human rights activists to go to Tunis to attend the World Social Forum²⁶⁶. They were informed that they were banned from leaving Algerian territory without a single explanation. An urgent appeal²⁶⁷ was immediately issued by the CFDA on 28 March and was sent to the African Commission on Human and Peoples' Rights to denounce these violations of human rights.

²⁶⁵ HOURIA (H.), « Ouargla : marche des chômeurs empêchée à Hassi Messaoud », *El Watan*, 25 February 2013

²⁶⁶ Joint press release by CFDA, LADDH, RADDH, EMHRN and SNAPAP: *Une délégation de défenseurs des droits de l'Homme algériens empêchée de participer au Forum social mondial à Tunis*, 26 March 2013, available on the website of the CFDA: www.algerie-disparus.org

²⁶⁷ CFDA, *Appel urgent concernant la violation de la liberté de circulation, de réunion et d'association du militant des droits de l'Homme et frère de disparu, M. Hacène FERHATI*, was sent to the President of the Working Group on Enforced and Involuntary Disappearances (WGEID), the Special Rapporteur on the situation of human rights, the Special Rapporteur on the right to peaceful assembly and association, the president of the ACHPR, the Special Rapporteur on the situation of human rights with the ACHPR, 28 March 2013

Chapter 8 - FREEDOM OF EXPRESSION AND INFORMATION



Article 36 of the Constitution guarantees the inviolability of «freedom of conscience and freedom of opinion». Similarly, under Article 41, «Freedom of expression, association and assembly are guaranteed to the citizen». At an international level, freedom of expression and information is recognised and guaranteed by various instruments to protect human rights such as Article 19 of ICCPR²⁶⁸ and Article 9 of the ACHPR²⁶⁹.

Following the fall of the Tunisian and Egyptian regimes and in response to the wave of protests that hit the country, the President of the Republic Abdelaziz Bouteflika, has launched «reforms» officially aimed at «strengthening the democratic process and opening new horizons in the exercise of individual and collective freedoms»²⁷⁰. These «reforms» have changed the law on freedom of expression and information, which are added to previous amendments made in 2011.

Thus, Law No. 09-04 of 5 August 2009 setting special rules for the prevention of and fight against crimes related to information technology and communication regulates the approaches taken on the internet. The second Law No. 11-14 of 2 August 2011 amending Articles 144 and 146a of the Penal Code relates to defamation. Finally, the new organic Law No. 12-05 of 12 January 2012 relating to information replaces the old Law No. 90-07 on information and changes the rules on freedom of the press. Presented as a big step forward, the Law No. 12-05 is far from consecrating the opening of the broadcast media, which has been sought after for many years, as well as imposes many restrictions to the freedom of expression and information²⁷¹. Freedom of expression in its various aspects such as the right to express one's views (1), the right to seek information (2) and the right to broadcast information (3), has many restrictions.

²⁶⁸ Article 19 § 2 of the ICCPR: «Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.»

²⁶⁹ Article 9 of the ACPHR: «Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law.»

²⁷⁰ MEHAL (N.), « La loi sur l'information introduit beaucoup de nouveautés dans le paysage médiatique », *El-Moudjahid*, 15 December 2011

²⁷¹ CFDA press release, *Des lois liberticides pour museler la presse et cultiver la désinformation en Algérie*, available on the website of the CFDA: www.algerie-disparus.org

1. The right to one's opinions

1.1. The violation of press laws

The freedom of each individual to freely express ideas or opinions without fear of repercussion is the essential foundation of freedom of expression. These would include the possibility of defending and freely expressing any political opinion. Violation of press laws are thus an important restriction on the freedom of expression.

Law No. 12-05 of 12 January 2012 relating to information has reduced the violation of press offenses to five: infringement of the confidentiality of preliminary investigation (Article 119), publication of the debates of certain civil trials ordered to take place behind closed doors (Article 120), the publication or broadcasting of trial proceedings relating to personal status and abortion (Article 121), publication or broadcasting of the circumstances of certain crimes or offences (Article 121), insulting foreign heads of state or members of diplomatic missions (Article 123). The adoption of this legislation was introduced and welcomed as a step forward as it provides the «*decriminalisation*» of press law violations. Law No. 90-07 states that fines and prison terms be the penalty for violating press laws. However, if the law no. 12-05 cancelled the prison sentence, it would keep the fine. The law has multiplied some fines by twenty. Thus, the term «*decriminalisation*» is misused since it is only the removal of the prison sentence, not the removal of any sentence, since the fine is maintained. Law No. 12-05 is far from being progressive. Instead, it has turned the violation of press laws, which was a special offense, into a common law offense, making it subject to tougher rule²⁷². In addition, excessive fines, between DZD 25,000 and DZD 500,000 have a deterrent effect on the exercise of freedom of expression²⁷³.

1.2. Defamation

Offenses made by the press are still punishable by the Penal Code, which sometimes provides prison sentences. Several provisions criminalise defamation against public or private persons under Articles 296 and 298 of the Penal Code. Article 296 defines defamation in the following general terms «any allegation or accusation of a fact that undermines the honour or consideration of the persons or entities to which the fact is attributed». In addition, the provisions in the Penal

²⁷² BRAHIMI (M.), « Un délit spécial ou un délit de droit commun ? », *Le Soir d'Algérie*, 2 September 2012

²⁷³ *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 12 June 2012, A/HCR/20/17, p. 6

Code impose restrictions on the media, prohibiting the publication of information that offends a judge, an official, a public officer, a commander or an agent of the police. Sanctions may be taken against the person responsible for the offense, the editor, the publisher, and even the media outlet itself²⁷⁴. Under the law No. 11-14 of 2 August 2011, these journalists cannot be sentenced to prison, however in practice very heavy fines are imposed on them (between 100,000 and 500,000 dinars), which has a very restricting effect on the exercise of freedom of expression. This leads journalists to practice self censorship²⁷⁵.

Moreover, the restriction of freedom of expression and opinion is more important, given that the rule *exceptio veritatis* allowing the journalist to escape repression by proving the truth of the defamatory matter is not provided by law²⁷⁶. This rule would allow the journalist to be automatically released if they are able to prove the truth of the allegation or the disputed accusation before the judge by pleading written evidence or testimony. Recent reforms have not incorporated this rule and therefore it has damaging effects on the freedom of the press²⁷⁷. In practice, journalists are systematically convicted in criminal proceedings for defamation or contempt. The only means of defence, if failing to oppose *exceptio veritatis*, remains to prove the good faith of the journalist. However, bad faith is always presumed in respect of infringements of a publication, and in practice it is very difficult to come to prove good faith.

In 2011 and 2012, several journalists who had publicly denounced the corruption of public officials, were accused of defamation and sentenced to prison. Although in most cases the sentences are not carried out, the fact is that these sentences create a favourable climate for self-censorship in the press. Thus, on 26 June 2012, Fatma-Zohra Amara, a journalist at the daily paper *Akher Saa*, was sentenced in the first instance to two months in prison and fined 20,000 dinars for defamation and was required to pay 100,000 dinars to the complainant, the former director of a hospital in Annaba, as damages and costs. On 7 July 2012, the Annaba Court of Appeal cancelled the two month prison sentence but maintained she pay the disproportionate fine²⁷⁸. This decision came after a complaint by the former Director of a hospital in Annaba, accused of sexual harassment by a former employee of the hospital, and denounced by the journalist.

²⁷⁴ Articles 144 and 146 a of the Penal Code

²⁷⁵ *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 12 June 2012, A/HCR/20/17, p. 6

²⁷⁶ BRAHIMI (M.), «Un délit spécial ou un délit de droit commun?», *Le Soir d'Algérie*, 2 September 2012

²⁷⁷ BRAHIMI (M.), «Un délit spécial ou un délit de droit commun?», *Le Soir d'Algérie*, 2 September 2012

²⁷⁸ Reporters without Borders, *Malgré l'annulation de la peine de prison ferme, Fatma-Zohra Amara demeure condamnée pour «diffamation»*, 7 July 2012

Another example is that of Manseur Si Mohamed, journalist, bureau chief of daily newspaper *Nouvelle République* and president of the Mascara branch of the Algerian Journalists' Union. He was sentenced by the court of Mascara on 20 May 2012 following the publication of a newspaper article deemed «defamatory» on 20 December 2011. In this article entitled « Council of State – What Is It For?», the journalist denounced the non-implementation of decisions of the Supreme Court and the Council of the State of sanctioning public authorities. In his article, Manseur Si Mohamed questioned the Mascara district tax inspector, accused of refusing to reinstate a senior official after the cancellation by the Council of the State of a decision to «downgrade». These penalties are clearly disproportionate and have a chilling effect on the freedom of expression²⁷⁹. There are other cases of regional correspondents, and the world ranking of press freedom by Reporters without Borders in 2013, which ranks Algeria in the 125th place, illustrates the worrying situation of journalists working in Algeria.

1.3. The Charter for Peace and National Reconciliation

Article 46 of Ordinance No. 06-01 of February 2006 on the implementation of the Charter for Peace and National Reconciliation provides that *«any person who, by speech, writing or any other act, uses or exploits the wounds of the national tragedy to harm the institutions of the Republic, to harm the reputation of its agents who served with dignity, or to tarnish the image of Algeria at an international level is punishable by imprisonment of three to five years and a fine of DZD 250,000 to DZD 500,000. In case of reoffending, the sanctions provided for in this Article shall be doubled»*. Although this provision has never been applied, it greatly favours the establishment of a climate of self-censorship, particularly in the media. The Special Rapporteur on freedom of opinion and expression reiterated that national reconciliation cannot be achieved by imposing silence, and that peace must be based on the right to truth and the victims' right to justice²⁸⁰. These rights are particularly relevant in cases of enforced disappearances. In its concluding observations of 2007²⁸¹, the Committee on Human Rights expressed concern and asked the Algerian government to revoke Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation, and in particular Article 46, *«which undermines freedom of expression and the right of every person to have access to an effective remedy against violations of human rights, both at a national and international level»*.

²⁷⁹ Reporters without Borders, *Malgré l'annulation de la peine de prison ferme, Fatma-Zohra Amara demeure condamnée pour « diffamation »*, 20 June 2012

²⁸⁰ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 12 June 2012, A/HCR/20/17, p. 7

²⁸¹ Committee of Human Rights, *Final Conclusions of 1 November 2007*, CCPR/C/DZA/CO/3/CRP.1, § 8

2. The right to seek information

2.1. The definition of information

Article 2 of Law No. 12-05 of 12 January 2012 states that the information is an «activity». Information is therefore no longer «the citizen's right to be fully informed in an objective manner»²⁸² but an activity that must meet many restrictions set by the legislator. In fact, if Article 2 of the law states that this activity is exercised «freely» in the current legislation, it is accompanied by twelve requirements that must be met. These conditions, which are particularly inaccurate, include respect for «the national identity and cultural values of the society, national sovereignty and national unity, requirements of the public order, the economic interests of the country, the tasks and obligations of public service.»

These limitations are incompatible with Article 19 § 3 of the ICCPR which states that restrictions must be an exception to the rule²⁸³. In addition, the vagueness of these principles may lead to censorship and/or self-censorship and significantly restricting freedom of expression²⁸⁴. Compliance with these provisions apply not only to journalists already constrained by other provisions of the same law, but also to any person providing information such as associations, human rights activists and political parties. Indeed, the information activity includes «any publication or broadcast of news events, messages, opinions, ideas and knowledge, by any outlet, written, audio, television or electronic, to the public or part of the public»²⁸⁵.

Article 2 of the law also applies to the audio-visual sector which should not only take into account the principles of this article, but also the provisions of Article 59 which provides that «the audio-visual activity is a public service». It is therefore subject to considerations of public interest, public order and cannot be exercised freely. In addition to the requirements of Article 2, journalists must comply with the provisions of Article 92 which states eleven new requirements added to those already provided for in Law No. 90-07²⁸⁶. Thus, the journalist must «respect the attributes and symbols of the State», «refrain from any infringement of the national history» and «refrain from publishing or releasing immoral or offensive images or remarks for the sensitivity

²⁸² Article 2 of Law No. 12-05 on information

²⁸³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 12 June 2012, A/HCR/20/17, p. 7

²⁸⁴ CFDA, LADDH, EMHRN SNAPAP, «Political Reforms» or Additional Lock on Society and Politics in Algeria? A critical analysis, April 2012

²⁸⁵ Article 3 of Law No. 12-05 on information

²⁸⁶ Article 40 of Law No. 90-07 on information

of citizens». The national daily newspaper El Khabar has removed a cartoon published on the occasion of Women's Day from its website featuring a blind and bearded man dressed in kamis (an oriental robe) being dragged behind a fully veiled woman, and in front of them, a chasm, denouncing discrimination against women encouraged by extremist religious speech. Strong criticism from readers who considered the cartoon blasphemy led the director of the newspaper to this self-censorship²⁸⁷.

2.2. The right to access information

To access information, journalists are subject to significant constraints²⁸⁸. The citizens' right to information is guaranteed by Article 83 of the law, in that it provides the means of access to information for the journalist. It provides that *«all instances, governments and institutions are required to provide the journalist with all the information and data he requires to ensure the citizen's right to information under this organic law and of the legislation in effect»*. However, this access to information is subject to many limitations, the list is longer than the old law, and especially when the *«information concerns national defence secrets, as defined by the legislation in force; information undermines the security of the State and/or national sovereignty in a clear manner; the information relates to the secrecy of the investigation and the judiciary investigation; the information relates to the strategic economic secret; information is likely to affect the foreign policy and economic interests of the country»*²⁸⁹.

The concepts used are particularly unclear, in particular those of *«State security»*, *«strategic economic secret»* or *«undermining foreign policy»* or that of *«economic interests»*. This may lead to self-censorship among journalists²⁹⁰ and newspaper editors to unnecessarily edit their journalists²⁹¹. These limitations also close windows of opportunities to journalists and provide State institutions such as Defence, Foreign Affairs and other security services, the argument behind which they took refuge to justify their refusal to disclose information²⁹². The Special Rapporteur on the right to freedom of expression and information is critical about the fact that

²⁸⁷ MECHAI (H.), «Une caricature dans le quotidien El Khabar», *El Watan*, 12 March 2012

²⁸⁸ DRIS (C.), «La nouvelle loi organique sur l'information de 2012 en Algérie : vers un ordre médiatique néo-autoritaire?», *L'année du Maghreb*, 2012, no. VIII, p. 303-320

²⁸⁹ Article 84 of Law No. 06-12 on information

²⁹⁰ BOISBOUVIER (C.), «Invité Afrique, Fayçal Métaoui, rédacteur en chef du journal El Watan, à Alger, «Les journalistes algériens sont devenus la cible privilégiée du régime»», *RFI*, 3 February 2006

²⁹¹ DRIS (C.), «La nouvelle loi organique sur l'information de 2012 en Algérie: vers un ordre médiatique néo-autoritaire?», *L'année du Maghreb*, 2012, no. VIII, p. 303-320

²⁹² DRIS (C.), «La nouvelle loi organique sur l'information de 2012 en Algérie : vers un ordre médiatique néo-autoritaire?», *L'année du Maghreb*, 2012, no. VIII, p. 303-320

investigative journalism on issues such as corruption of public officials is no longer possible, that there is no reason why access to information resources is granted only to professional journalists and finally that there are no procedural rules relating to the access to information or appeals in the event of refusal have been implemented²⁹³.

3. The right to freely broadcast and receive information

3.1. Restrictions on the right to freely broadcast information

There are more than eighty daily newspapers across the country. However, many publications belong to businessmen linked to the interests of the regime and to intelligence services²⁹⁴. For example, Amara Benyounès, former Minister, was able to create his own newspaper, *the Dépêche de Kabylie* in 2002, which supports Abdelaziz Bouteflika in Kabylie. He has subsequently been re-appointed Minister of Planning, Environment and City. Moreover, according to the UN Rapporteur on the promotion and protection of the right to freedom of opinion and expression, fewer than six newspapers are really independent in Algeria²⁹⁵.

Although, the Law No. 12-05 affirms in Article 11 the principle of freedom of publishing, it requires different levels of approval procedures. Thus, only authorised associations are empowered to create media to undertake «activities» of information²⁹⁶. In view of the restrictions imposed by Law No. 12-06 on associations to create an association²⁹⁷, it is clear that this provision is in practice a great obstacle²⁹⁸. In addition, Articles 11 and 13 of Law No. 12-05 require an approval procedure for launching any periodical through a prior notification to the press regulatory authority and waiting period of six months.

Such restrictions were also put in place for journalists and editorial teams. Article 76 of Law No. 12-05 actually limits the function of «professional journalist» to those able to present a national press card issued by the Commission. Article 79 of the same law further provides that

²⁹³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 12 June 2012, A/HRC/20/17, p. 9

²⁹⁴ Reporters without Borders, *Cinquante ans après l'indépendance, la situation de la liberté d'information reste préoccupante*, 4 July 2012

²⁹⁵ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue - Mission to Algeria, A/HRC/20/17/Add.1, 12 June 2012

²⁹⁶ Article 4 of Law No. 12-05 on information

²⁹⁷ Cf chapter 9 on freedom of association

²⁹⁸ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Mission to Algeria, A/HRC/20/17/Add.1, 12 June 2012, p. 8

any editorial team must be composed of at least one third of journalists holding the national professional journalist card. Such quotas can be seen as a form of control²⁹⁹. In addition to these procedures, other conditions are imposed on a newspaper editor, including the number of years of experience and being of Algerian nationality.

In addition, the announced «opening» of the audio-visual sector is actually fiction³⁰⁰. Three private channels (Echourouk, Annahar and Djazairia) broadcasting from abroad have received accreditation from the Ministry of Communication to open offices in Algiers in April 2013. However, this authorisation is only temporary because it is only valid until 31 December 2013. The Ministry of Communications did not provide any guarantee to these channels for a permanent renewal after this date. The opening of the audio-visual sector remains cautious and the State's monopoly on broadcasting is very present.

Finally, Law No. 12-05 provides for the creation of different organisations related to information in addition to other existing institutions, which will exercise effective control.

3.1.1. The supreme Council of journalistic ethics and conduct (Articles 94-99)

Law No. 12-05 gives a great importance to ethical and professional conduct by journalists and imposes in Articles 2 and 92, a set of principles, characterized by vagueness. Control of these principles is exercised by the Supreme Council of the Press Code of Ethics, which is responsible for drafting a charter of honour, setting penalties and prosecuting journalists who are unethical. Only licensed professional journalists, however, may elect the members of the Supreme Council of the Press Code of Ethics.

Considering the difficulties that some journalists face to obtain access to information, provide quality information and protect their sources, one may question the independence of the composition of the Supreme Council of the Press Code of Ethics.

3.1.2. The National Agency for Communications, Publications and Advertising (ANEP)

This company, fully funded by the State, was founded in 1967 and is, among others, responsible for allocating advertising to daily newspapers. Public advertising is a significant financial

²⁹⁹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Mission to Algeria, A/HRC/20/17/Add.1, 12 June 2012, p. 8

³⁰⁰ CFDA, LADDH, EMHRN and SNAPAP: «Political Reforms» or Additional Lock on Society and Politics in Algeria? A critical analysis, April 2012

resource for the press. This ability allows the authorities to exercise a real power on newspapers, using discrimination against those who are critical of the authorities. The El Watan and El Khabar newspapers are, for example, forbidden from public advertising since 1996 and 1997 respectively³⁰¹. Thus, in the absence of regulation, this company's operation lacks transparency. Private advertising most often comes from companies close to the country's political circles. So, it will primarily serve the newspapers who are most docile to the ruling military and the intelligence and security department³⁰².

3.1.3. Commission issuing press cards (Article 76)

According to Article 76 of Law No. 12-05, the national professional journalist card is issued by a commission whose composition, organisation and operation must be determined by rules and regulations. Its role will enable the Commission to exercise some control over journalists and editorial teams.

3.1.4. A regulatory authority for the written press (Article 40)

Article 40 of Law No. 12-05 establishes a regulatory authority for the written press, responsible for «ensuring the quality of media messages, the promotion and highlighting of national culture in all its aspects, encouraging the plurality of information, (...) as well as the transparency of economic rules of operating the publishing companies». The regulation authority's functions allow it to exert pressure on the press. In case of breaching the obligations provided by law, the regulator of the press shall provide comments and recommendations to the relevant bodies of information that would be «necessarily publishable» by the latter³⁰³. Article 20 of the law provides that the issue of foreign language publications is subject to an «agreement of the regulatory authority of the press». The administrative authority may therefore prohibit the use of a foreign language. This provision clearly targets Algerian French-language newspapers.

We have to highlight that questions remain about the independence and scope of powers of this authority³⁰⁴. Indeed, Article 50 provides for the composition of this higher instance of only

³⁰¹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue - Mission to Algeria, A/HRC/20/17/Add.1, 12 June 2012, p. 12

³⁰² Reporters without Borders, *Cinquante ans après l'indépendance, la situation de la liberté d'information reste préoccupante*, 4 July 2012

³⁰³ Article 42 of Law No. 12-05 on information

³⁰⁴ Reporters without Borders, *Cinquante ans après l'indépendance, la situation de la liberté d'information reste préoccupante*, 4 July 2012

three members, including the chairman, who are appointed directly by the President of the Republic. The president of the People's National Assembly appoints two representatives and two others are appointed by the President of the Council of the Nation. The last seven members are appointed by an absolute majority among professional journalists who have at least fifteen years of experience. There is thus a danger that this regulatory authority, with very broad terms and power, restrict a little more the freedom of the press³⁰⁵.

3.1.5. A regulatory authority for audio-visual media (Article 64)

Article 64 of Law No. 12-05 provides for the establishment of a regulatory authority for audio-visual media and establishing a new framework for potential control. The tasks and responsibilities of the authority shall be determined by the law on the audio-visual.

The draft bill on audio-visual media endorsed by the government on 3 April 2013 is a series of obligations and bans³⁰⁶. Indeed, the private sector can only have access to thematic and non-general channels, and 60% of the programmes must be national. Finally, criminal and administrative penalties by the Regulatory Authority of Audio-visual Media are planned.

3.1.6. Other bodies influencing the media

Besides the various authorities established to regulate the media, other institutions also hamper the freedom of the press. It is worth mentioning that in this sense, the law reflects fiscal administration³⁰⁷, and has in the past put pressure on two newspapers that were very critical of governmental policies, El Watan and El Khabar. Thus, the two daily newspapers were subjected to a six month inquiry by tax authorities. In January 2012, El Watan was also summoned by the National Social Insurance Fund for Employees to pay DZD 221,084 409.75 arrears of social security contributions from employees and freelancers for the period from 2005 to 2011³⁰⁸. Moreover, the majority of newspapers rely on State printing houses. Given that many editors have accumulated debts to the national printing house, they refrain from criticising the government and are therefore not independent of the regime.

³⁰⁵ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue - Mission to Algeria, A/HRC/20/17/Add.1, 12 June 2012, p. 13

³⁰⁶ CHIH (A.), "Autorité de régulation de l'audiovisuel. Un simple instrument entre les mains des autorités?", *Liberté*, 4 April 2013

³⁰⁷ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue - Mission to Algeria, A/HRC/20/17/Add.1, 12 June 2012, p. 12

³⁰⁸ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue - Mission to Algeria, A/HRC/20/17/Add.1, 12 June 2012, p. 12

Finally, we notice that police forces do not hesitate to intimidate journalists. On 5 March 2011, a group of journalists were arrested by security forces during a rally in Oran. The journalists were taken to police stations and released a few hours later. The same day, the police seized the camera of another journalist who had taken pictures of the police trying to break up the demonstration³⁰⁹. In March 2012, two journalists were subject to beatings by the police while they were trying to cover protests³¹⁰. On 14 August 2012, the newspaper El Watan issued a statement denouncing the harassment of one of its journalists, Zoheir Ait Mouhoub. The journalist has been harassed by security services for having dealt with sensitive issues such as organised crime networks in the informal sector and government manipulation. Zoheir Ait Mouhoub was continuously tracked and monitored outside his home and was forced to move. On 31 July 2012 he was subjected to a forceful arrest accompanied by threats³¹¹.

3.2. The right of rectification

The new Law No. 12-05 on information imposes an obligation of rectification on editors who must «publish or broadcast, for free, any rectification which will be addressed by any natural or legal person on stories or opinions that have been inaccurately reported»³¹². It is not clear what authority will be given the power to decide whether the stories or opinions in question have been inaccurately reported or if they violate the «national values» and «national interest»³¹³ – notions that are particularly vague.

3.3. Restrictions against expat and international press

Law No. 12-05 poses many restrictions on the printing of newspapers held by foreign companies, on the import into Algeria of foreign periodicals as well as import and/or production of periodicals for free distribution by foreign organisations and diplomatic missions.

Article 22 of Law No. 12-05 provides that the printing of any newspaper held by a foreign corporation «is subject to be authorised by the Ministry of Communications». Article 23 of the same law provides that the manager responsible for any periodical publication shall, among other things, be an Algerian national. Furthermore, Article 38 subjects the production and

³⁰⁹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue – Mission to Algeria, A/HRC/20/17/Add.1, 12 June 2012, p. 12

³¹⁰ Reporters without Borders, *Deux journalistes agressés par la police : les violences deviennent systématiques*, 21 March 2012

³¹¹ AIT KACI (S.), «Harcèlement de Zoheir Aït Mouhoub: El Watan dénonce des «pratiques intolérables»», *El Watan*, 14 August 2012

³¹² Article 110 of Law No. 12-05 on information

³¹³ Article 112 of Law No. 12-05 on information

importation of periodic publications for free distribution by foreign agencies and diplomatic missions to the «*prior authorisation of the Ministry of Foreign Affairs*».

Finally, the law prohibits «*direct or indirect material assistance from any foreign party*»³¹⁴. It is therefore forbidden for directors of newspapers or other information outlets to receive «*funds [...] or [...] benefits from a foreign public or private organization*» in their name or in the name of their publication on penalty of a fine of between 100 000 and 400 000 dinars under Article 117 of this law. It seems that the goal is to avoid any contribution from abroad, whether financial or intellectual, or any influence in order to better control the periodical publications. The Special Rapporteur on freedom of opinion and expression considered that these provisions are intended to control periodicals and are consequently unacceptable³¹⁵.

³¹⁴ Article 29 of Law No. 12-05 on information

³¹⁵ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue – Mission to Algeria, A/HRC/20/17/Add.1, 12 June 2012, p. 14

Chapter 9 - FREEDOM OF ASSOCIATION AND TRADE UNION FREEDOMS



Article 41 of the Constitution stipulates that «freedoms of expression, association and assembly are guaranteed to the citizen». At an international level, freedom of association is guaranteed by Article 21 of ICCPR³¹⁶ and Article 10 § 1 of the ACHPR³¹⁷.

However, the new Law No. 12-06 relating to associations of 12 January 2012 reflects the will of the Algerian State to restrict fundamental freedoms, essential for personal flourishing and the exercise of citizenship. This law established – against a background of national reconciliation and civil concord³¹⁸ – a system of freedom of association even less protective than the one that

³¹⁶ Article 21 of the ICCPR: «The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.»

³¹⁷ Article 10 § 1 of the ACHPR: «Every individual shall have the right to free association provided that he abides by the law.»

³¹⁸ The process of «civil concord» was launched in 1999 by the Algerian authorities with the adoption of Law No. 99-08, which came into force on 13 July 1999. This law was put to a vote by referendum two months later. Immunity from prosecution was provided for members of armed groups who would surrender within a period of six months, as well as



existed legally during the Algerian Civil War. In the context of political reforms, the President of the Republic has asked the National Economic and Social Council (CNES) to lead consultations with the civil society. If this approach is surprising owing to the executive having no mandate to organise the civil society, it is even more questionable since the «undesirable» associations «having no authorisation»³¹⁹, and independent trade unions have not been invited to this consultation. The CFDA immediately denounced the draft law, and together with the EMHRN, developed a memorandum to raise national and international awareness. In any event, the absence of an implementing decree for the new law on associations certifies that the freedom of association remains largely in the hands of arbitrary administrative authorities, and is both theoretical and illusory for citizens and the civil society in Algeria.

reduced punishments for those who have committed certain crimes.

³¹⁹ It is important to underline that out of the 1,027 approved Algerian associations, only seven are associations of human rights. Figures published on the website of the Ministry of Interior and Local Collectivities on 21 March 2013: <http://www.interieur.gov.dz>

After his visit to Algeria in April 2011, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has also expressed concerns about the new law in that it restricts liberties «unduly»³²⁰ (1).

Both freedom of trade unions and freedom of association are guaranteed by the Constitution. Article 56 of the Constitution provides that «the right of association is recognised for all citizens». At an international level, freedom of association is particularly protected by Article 22 § 1 of the ICCPR³²¹. Algeria has also signed and ratified the Convention 87 of the International Labour Organization (ILO) on the Freedom of Association and Protection of the Right to Organise. Despite these provisions and the internal legislation³²² that facilitates the creation of trade unions, freedom of association is far from being effective. In fact, the government spreads confusing among the population by “cloning» autonomous trade unions to discredit their work³²³. Indeed, the obstacles to the creation of a union persist, as well as the harassment independent trade unionists suffer as all of their strikes are declared illegal by the courts (2).

1. Denial of the freedom of association by Law No. 12-06

1.1. Violation of the freedom of association at the time of the association’s constitution

1.1.1. A system of authorisation

Under the influence of the former Law No. 90-31³²⁴, the formation of an association was subject to a notification procedure, otherwise called simple notification. Thus, under the former Article 7 of Law No. 90-31, it was sufficient for the founding members to file a declaration of formation of an association with the competent public authority to be issued a registration receipt within sixty days after the date of submission. In practice, however, the administrative authorities were arbitrarily refusing to issue registration receipts³²⁵, especially when the field of

³²⁰ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Mission to Algeria, A/HRC/20/17/Add.1, 12 June 2012, p. 19

³²¹ Article 22 § 1 of the ICCPR: «Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.»

³²² Law No. 90-14 of 2 June 1990 on the conditions to exercise the trade union rights

³²³ Report of the International Committee for the Support of Algerian Independent Trade Unions (CISA), *Entre répression et manipulations : le courageux combat des syndicats autonomes algériens*, 15 November 2009, p. 6-9

³²⁴ Law No. 90-31 of 4 December 1990 on associations

³²⁵ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Mission to Algeria, A/HRC/20/17, 12 June 2012, p. 19

activity was related to human rights.

This is the case for SOS Disappeared, an association which has never received a registration receipt. While the Council of Secondary Schools in Algiers (CLA), created in 2003, got its registration receipt in early January 2013, namely 10 years after having submitted the request and the administrative authorities have still not deigned them with an explanation for this «unjustified» delay.

Today, under the new Law No. 12-06, the simple statement is not enough. Establishing an association is now conditioned to a prior authorisation by the authorities who are required to «deliver a registration receipt with amenity value to the Association «or» decide to refuse»³²⁶. Only the President of the Association or his duly authorised representative may file a declaration of constitution before the competent public authority. In case of administrative silence, the association is considered to be established by full rights, even if it has to wait for a registration receipt to operate legally³²⁷. However, the receipt may be delivered very late or not be delivered at all.

In the case of refusal, Article 10 of Law No. 12-06 provides that «the decision to refuse to issue a registration receipt must be justified by the non-compliance with the provisions of this law». In practice, however, the obligation to justify is not respected, which makes it difficult to appeal the decision. The case of the National Association for the Fight Against Corruption (ANLC) illustrates this situation³²⁸. Indeed, on 9 August 2012, the application for approval was filed with the Office of Associations of the Ministry of the Interior. Contrary to Article 8 of Law No. 12-06, the ministry has never issued ANLC the receipt of submission. On 29 October 2012, Khelil Moumène, Secretary General of the ANLC, received a negative response without justification from the Minister of the Interior on 9 October 2012, who simply refused to grant approval for «failure to comply with the new law on associations». Therefore, the association is unable to correct the situation, ignoring which articles of the law were not precisely respected³²⁹. At the end of January 2013, an appeal to the Administrative Court of Algiers was presented.

³²⁶ Article 8 of Law No. 12-06 of 12 January 2012

³²⁷ Article 11 of Law No. 12-06 of 12 January 2012

³²⁸ Joint press release of Act for Change and Democracy in Algeria, CFDA, FIDH, LADDH, OBS, OMCT, RADDH, EMHRN and SNAPAP, Algérie: *L'exercice de la liberté d'association toujours entravée*, 9 November 2012

³²⁹ GUENANFA (H.), « Le ministère de l'Intérieur refuse d'agréer une association de lutte contre la corruption », TSA, 4 November 2012

In addition, Article 45 of Law No. 90-31 which provided for imprisonment for «any person who manages, administers or campaigns in a non-approved, suspended or dissolved association» has been preserved and replaced by Article 46. If this article reduces the duration of the prison sentence, it greatly increases the amount of the fine. The authorities may refuse the registration of associations, whose object or purpose is considered «*contrary to the national constants and values and to the public order, morality and to laws and regulations*»³³⁰. In practice, these extremely vague criteria allow the administrative authorities to prevent the formation of numerous associations for the defence of human rights or political associations challenging the public authorities. Thus the creation of associations is subject to administrative discretion.

1.1.2. The number of founding members to form an association and place of residence of the founding members

While Law No. 90-31 required the presence of five founding members to create an association, which already weighed down the procedure and was denounced by the associations during general assembly, this current law provides for its part an even larger number of people to form an association.

Article 6 requires ten founding members to form a communal association, fifteen members for a provincial association (from at least three communes), twenty-one members of an inter-provincial association (from at least three provinces) and no fewer than twenty-five members for a national association (from twelve provinces), where, typically, only two people are needed to form an association.

Law No. 12-06 maintains the distinction between associations according to their territorial level (national associations, inter-provincial associations, provincial associations and communal associations) even though they are all Algerian. This distinction is similar to creating local and national citizenship. In practice, the administrative authorities use this distinction to prevent any activity outside the province where the association has been registered and to complicate the cooperation between the associations.

1.1.3. Foreign associations

If local and national associations suffer from the new legislation, foreign associations are without a doubt the worst off in the decline of the freedom of association in Algeria. These

³³⁰ Article 39 of Law No. 12-06 of 12 January 2012

associations, which «have their headquarters abroad or have headquarters in the country, are either partially or completely run by foreigners»³³¹, must create a file for the creation of a foreign association and submit it to «the prior approval of the Minister of the Interior», which will take its decision «after consultation with the Minister of Foreign Affairs and the minister responsible for the concerned sector»³³². In practice, when a foreign organisation has a folder under foreign laws, the Directorate of Associations within the Ministry of the Interior asks them to create an association for Algerian law.

Foreign associations are obliged to comply with the terms of Law No. 12-06, which are more stringent than those for national associations. The period of time needed for granting or denying the approval is 90 days, compared to a 60 day period for national associations.

In addition, Article 63 of the text states that «the aim of an application for approval of a foreign association shall be to implement the provisions contained in an agreement between the Government and the Government of the country of origin of the foreign association to promote the friendship and brotherhood between the Algerian people and the people of the foreign association». This obviously allows the Algerian authorities to select associations and impose their choices about their activities.

Regarding the dissolution of foreign associations, Article 65 of Law No. 12-06 states that the authorisation may be suspended or revoked if the association «engages in a characterised interference in the affairs of the host country or its activities are likely to affect: the national sovereignty, the established institutional order, the national unity or integrity of the national territory, the public order or morality or even the civilisational values of the Algerian people». The extremely inaccurate nature of these provisions, including «civilisational values of the Algerian people» confers arbitrary power of the administrative authorities, who can hide behind patriotic grounds to prohibit associations' activities which they regard as undesirable. In practice, associations defending human rights are obviously the ones who suffer the most from this discretion, the defence of human rights seems to hardly taken into account, according to the authorities, of the «civilisational values» of the Algerian people while the 1996 Constitution considers them to be the «common heritage of all Algerians» and they have «the duty to preserve its integrity» (Article 32).

³³¹ Article 59 of Law No. 12-06 of 12 January 2012

³³² Article 61 of Law No. 12-06 of 12 January 2012

1.2. Violation of the freedom of association during the existence of the association

1.2.1. Associations' funding

The possibility for organisations, especially NGOs, to have access to resources is a vital and integral part of the right to freedom of association³³³.

Law No. 12-06 states that organisations' resources consist primarily of grants «granted» by the State, the province or the commune³³⁴.

This particularly vague concept allows an improper interpretation by the competent authorities which can, in theory, control any funding of the voluntary sector. Associations for the defence of human rights have only very little of this «consent».

In addition, unlike Law No. 90-31 which provided that the associations could receive, with prior government approval, donations and bequests from foreign associations, Law No. 12-06 states that «outside the duly established cooperative relationships», associations are forbidden from receiving donations, grants or other contributions from all «legations or foreign non-governmental organisations», and that these funds are subject to the prior approval of the Minister of the Interior³³⁵. This new legislation deprives the associations from funding vital for their survival. In addition, by imposing the agreements framework called «partnership», the authorities put an additional means of control over the associations' resources and thereby on their activities and partners, allowing them to interfere with their internal affairs and guide their work. The Committee on the Elimination of Discrimination against Women expressed its concern about the «provisions of the Law on Associations, adopted in January 2012, which provides specific authorisation for an association to receive grants from international donors, which can have a negative impact on the activities of associations promoting gender equality and women's empowerment in the context of development»³³⁶.

The funding of foreign associations is also targeted. Article 67 of this law states that the amount of funding «can be subjected to a regulated cap». No rule has yet been adopted.

³³³ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 24 April 2013, A/HRC/23/39, § 8 and 9, Observatory for the protection of human rights defenders, *Violations du droit des ONG au financement: du harcèlement à la criminalisation*, 2013

³³⁴ Article 29 of Law No. 12-06 of 12 January 2012

³³⁵ Article 30 of Law No. 12-06 of 12 January 2012

³³⁶ CEDAW, *Concluding Observations of the Committee on the Elimination of Discrimination against Women – Algeria*, CEDAW/C/DZA/CO/3-4, 23 March 2012, § 19

1.2.2. Controlling the associations' activities

The provisions of Article 19 require associations to provide the authorities minutes from meetings and financial reports after each general meeting. This allows greater control over the association's activities. In addition, associations are liable to a fine if they refuse to provide such information³³⁷. So this article is a clear interference in the existence of associations who lose their autonomy.

1.2.3. Cooperation with foreign organisations

The provisions of Article 21 of Law No. 90-31, which stated that only associations of a national nature could join international associations and that this could only occur with the consent of the Ministry of the Interior, were modified. According to Law No. 12-06, all «approved» organisations can join foreign associations. However, the Minister of the Interior should be informed of their membership and requires the opinion of the Minister of Foreign Affairs. The Minister of the Interior may oppose this membership within 60 days. In addition, Law No. 12-06 also submits cooperation in partnership with foreign associations and international NGOs to prior agreement from the competent authorities³³⁸, even though Law no. 90-31 does not clarify this.

In practice, the difficulties in accessing the country are maintained for members of international associations struggling to obtain entry visas, making cooperation between Algerian and foreign associations more difficult. In fact, Sihem Bensedrine, a Tunisian journalist and human rights activist, was held for over five hours by border police on her arrival at Algiers airport³³⁹. She came to attend a seminar on the fight against impunity and transitional justice organised by the Coalition of the 1990 Victims' Associations. Likewise, in early March 2013, a meeting/ intercultural exchange between European and Algerian feminists was not able to be held because all foreign guests were refused visas to enter Algeria for this occasion.

1.3. Violation of the freedom of association relating to reasons and procedures behind the dissolution of the association

When suspending and dissolving associations, the new procedure has severely tightened

³³⁷ Article 20 of Law No. 12-06 of 12 January 2012

³³⁸ Article 23 of Law No. 12-06 of 12 January 2012

³³⁹ MAKEDHI (M.), «Elle a été retenue à l'aéroport d'Alger toute la journée d'hier : Sihem Bensedrine a failli être refoulée», *El Watan*, 11 February 2012

control in the associative field. The association may now be subject to a suspension of activities or dissolution «in case of interference in the country's internal affairs or undermining the national sovereignty»³⁴⁰. This provision, which seeks to deprive citizens of their right and duty to be interested in the affairs of their country violates Article 22 of the ICCPR, which provides that the right of association can only be subject to such restrictions justified as «necessary in a democratic society in the interests of national or public security, the prevention of disorder and crime or the protection of health and morality or the protection of rights and freedoms of others». Associations for the defence of human rights are obviously the most affected by this provision, since, by definition, their activity includes a dimension of analysis, criticism and support of the State in the conduct of public policy, essential for the functioning of any democracy. The use of patriotic rhetoric is, once again, used to justify the dissolution of the more troublesome associations. Article 43 of the law provides that an association can be dissolved if it has «received funds from foreign legations and NGOs» or «engaged in activities other than those provided by its statute.» The vagueness of this provision once again leads to misuse from the administrative authorities.

Worst yet, the same article states that the application for the dissolution of an association may be requested by «third parties in a conflict of interest with the association,» allowing organisations supported or created by the State itself (organisations known by the acronym of GONGO) to take legal actions to prevent more skilfully, independent associations from continuing their activities. Regarding the suspension procedure for the activities of an association, the new law has once again returned to an important legal gain. While the intervention of a judge was, since 1990, necessary to suspend an association, Law No. 12-06 reconsidered this gain by putting in place an administrative decision which is now enough to suspend the activities of an association that would not comply with the law, without specifying the provisions of the law in question³⁴¹.

Compliance of associations created prior to Law No.12-06.

The new Article 70 of Law No. 12-06 requires associations legally constituted under the influence of the old law, «to comply with the provisions of this Article within a period of two years from the filing of new compliant statutes» under penalty of dissolution. The government thus has a real a retrospective control of associations that have been working legally for several years, having acquired, by the effectiveness of their work and commitment, a certain reputation both on a national international scale. This is a flagrant violation of the principle of legal certainty

³⁴⁰ Article 39 of Law No. 12-06 of 12 January 2012

³⁴¹ Article 41 of Law No. 12-06 of 12 January 2012

and legitimate expectations.

This provision is contrary to the recommendation of the UN Special Rapporteur on the situation of human rights activists that «in case of adoption of a new law, all NGOs previously registered should be regarded as continuing to operate under the law and they would have to provide for expedited procedures to update their registration». Therefore, the Law no. 12-06, instead of opening the autonomous spaces and promoting the freedom of association, it organises an increased control of these spaces and particularly of associations' rights.

2. Violation of the freedom of trade unions

2.1. Barriers to the creation of a trade union

Although Law No. 90-14 of 2 June 1990 provides for the freedom of trade unions, and that Algeria has ratified Convention No. 87 on the 1948 Freedom of Association and Protection of the Right to Organise, this freedom continues to be breached regularly. This suggests that the government does not consider itself bound by the obligation to respect freedom of trade unions because of the interpretative declaration set in Article 8 of the International Covenant on Economic, Social and Cultural Rights³⁴², which it ratified in 1989.

The law organises a declaratory system. In principle, the union must lodge a simple statement with the relevant authority. The union must then receive a registration receipt of the declaration of incorporation and make public the existence of the created union³⁴³. However, in practice, the administration never sends the receipt, or it sends it with unexplained delay³⁴⁴. This has the effect of transforming the nature of the declaratory system into a prior authorisation system because without a registration receipt, the union cannot legally exist.

In 2012, four independent unions, the Union of Higher Education Teachers (SESS), SNAPAP, the National Autonomous Union of Workers of the SONELGAZ Group and the National Autonomous Union of Postal Workers (SNATP) filed a complaint with the Committee of the Freedom of Association of the International Labour Office to challenge the systematic refusal of the Ministry of Labour and Social Security to record approval applications. In its last report in

³⁴² Article 8 § 1: «The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice [...].»

³⁴³ Article 8 of Law No. 90-14 of 2 June 1990

³⁴⁴ National Committee of Trade Union Rights, *Rapport préliminaire du Comité National des Libertés Syndicales (C.N.L.S.) sur les libertés syndicales en Algérie. Algérie : Libertés syndicales confisquées*, April 2005, p. 11

March 2013, the Committee on the Freedom of Association had asked the Algerian authorities to record these unions quickly, after noting that «any delay caused by the authorities in registering a trade union constitutes an infringement of Article 2 of the Convention No. 87»³⁴⁵.

In the case of SESS for example, it filed an application for registration on 19 January 2012. Through a letter dated 16 February 2012, but sent on 5 March 2012, one month after the expiry of the time limit provided by Law No. 90-14, the Ministry of Labour and Social Security merely replied that the statement did not comply with the law, without specifying which article was breached to allow the union to comply with it. This same imprecise response was received by other unions. As a result, on 20 March 2012, the national office of SESS has filed a complaint against the Algerian Government regarding the ILO Committee on Freedom of Association for refusing to register a trade union and not respecting Convention 87 of the ILO³⁴⁶. Following a meeting with the Ministry of Labour and Social Security, the SESS has amended its articles taking into account the ministry's remarks. However, in April 2013, the SESS was still waiting for their registration receipt.

The National Union of Vocational Training Workers (SNTFP) filed an application for incorporation in August 2002. After having seized the Committee on Freedom of Association which noted «with deep regret that the Government has not complied with the recommendations which it made more than a year ago»³⁴⁷, in its annual report in March 2012, the union finally got its registration receipt in May 2012, ten years later! The National Autonomous Union of Postmen (SNAP) filed two applications for approvals in 2012 and a third in March 2013, but they are still waiting for their receipt.

To denounce the non delivery of registration receipts, a dozen unions and associations held a joint rally on 25 February 2013 near the headquarters of the Ministry of Labour and Social Security, the sole authority to grant accreditation but no accreditation was granted.

Even when unions include the requested corrections, they still receive no response from the administration. This is the case for the Workers Union of the El Hamma Jardin d'Essais, the Autonomous Union of Algerian Cleaning Workers (SNATNA), the National Autonomous Trade Union of workers in paper processing and packaging (SNATFTPE), the Autonomous National

³⁴⁵ Committee on Freedom of Association, 367th Report of the Committee on Freedom of Association, March 2013, GB.317/INS/8, p. 29-35

³⁴⁶ CHOUICHA (K.), « Le droit syndical méprisé : communiqué du SESS », 15 March 2012, disponible sur le site de la LADDH : <http://www.la-laddh.org>

³⁴⁷ Committee on Freedom of Association, 363rd Report of the Committee on Freedom of Association, March 2012, GB.313/INS/9, § 17

Union Bank of Agriculture and Rural Development (SNABADR) or the Autonomous Regional Union of Construction Wood and its Derivatives (SRATCBD).

Sometimes other obstacles prevent the registration of the association due to a very restrictive reading of the law. Indeed, the registration of the Autonomous Workers Union of Gas and Electricity for Sonelgaz (SONATEGS) was denied because the administration required the union to have its own headquarters even before registration, while SONATEGS had provided the registered address of the SNAPAP who had agreed to host the union on a temporary basis. These examples, which are far from being isolated cases, illustrate the practice of the Algerian authorities systematically refuse registration of trade unions without justification. The issuance of a registration receipt is at the mercy of the authorities, who decide arbitrarily and when they want.

A major challenge for the unions who are denied approval is to challenge the refusal, which is often unjustified.

2.2. Harassment of trade unionists

Employed trade unionists continue to be under pressure from their employers to stop their activities³⁴⁸.

The appeal launched by Bouamriene Mohamed is enlightening. He was working for an oil company in southern Algeria. In March 2003, he took the initiative to create a union of workers in accordance with the national legal provisions. Bouamriene Mohamed then became the «pet hate» of the company and has undergone many pressures, especially for illegal accounting operations, which he has always denied. Victim of a smear campaign of false accusations brought by employees of the company, Bouamriene Mohamed was dismissed for forgery. However, the company did not take any legal action against him, and Bouamriene Mohamed has never had the opportunity to defend himself against his employers. Regarding the policy of his former company, he stated that «every worker eager to reclaim his legitimate rights as well as to commit to the creation of a union will be considered a troublemaker and will therefore be dismissed³⁴⁹. This testimony, far from being anecdotal, illustrates the methods used in the workplace to discourage workers from forming unions.

³⁴⁸Joint press release CFDA, LADDH, EMHRN, *Soutien à Meryem Mehdi : pour le respect des libertés syndicales en Algérie*, 4 February 2009, available on the website of the CFDA: www.algerie-disparus.org

³⁴⁹ BOUAMRIENE (M.), «Témoignage d'un syndicaliste autonome victime de l'arbitraire et d'un licenciement abusif», *Journaliste citoyen algérien*, 21 January 2013

Sometimes, employers go even further by imposing a clause in the employees' employment contract preventing them from exercising their freedom of association³⁵⁰. More generally, they reduce your pay. For example, the National Union of Public Health Specialists (SNPSSP) decided to go on an unlimited strike from 15 April 2012 over better working conditions, a salaries review and status. The SNPSSP denounced on that occasion many intimidations from the Ministry of Health. In fact to discourage unions from going on strike, the ministry threatened the strikers with salary cuts and summoning the union leaders to interrogate them on their activities and prevent them from participating in the strike³⁵¹.

In addition, the Algerian judiciary systematically declares strikes organised by independent unions illegal without justification, thus allowing the dismissal of employees for having exercised their right to strike³⁵². These unfair dismissals are exercised to deter employees from going on strike and punish those who do. The case of Algiers metro construction workers working on the extension line to the Place des Martyrs is revealing. On strike since 21 November 2012, the workers claimed better overtime pay and better work safety conditions. Two hundred and eighty strikers were dismissed by their employer for deserting their post and for illegally exercising their right to strike. The decision was upheld by the courts. In protest against this unfair dismissal, the workers organised a trade union and held a sit-in in Place des Martyrs in Algiers to call for the reconsideration of their situation by their employer³⁵³. The dismissed strikers were quickly replaced by new foreign workers who were considered to be less disruptive.

Nine trade unionists from the National Autonomous Union of Public Administration Staff (SNAPAP) who called for a strike of the public administration workers in February 2013, have been suspended. An Algiers court judged the call to strike as illegal. According to Saâd Eddine Ghoul, president of the Federation of Public Works Sector of SNAPAP, this measure is intended to «punish» the refusal of the new union to join the General Union of Algerian Workers (UGTA) which is similar to blackmail³⁵⁴. Indeed, UGTA, the former single union before the independence of Algeria, is the only union to participate in the tripartite government-employers-workers, sidelining the other autonomous unions in the country.

³⁵⁰ TLEMCANI (S.), « Monde du travail : Menace sur les libertés syndicales », *El Watan*, 28 December 2011

³⁵¹ ARAB (F.), « Grève illimitée à partir du 15 avril », *El Watan*, 10 April 2012

³⁵² Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights, Mission in Algeria*, E/C.12/DZA/CO/4, 7 June 2010, p. 4 § 11

³⁵³ DJOUADI (F.), « L'année 2013 entamée sous le signe de la protestation sociale en Algérie », *Maghreb émergent*, 7 January 2013

³⁵⁴ ARAB (F.), « Neuf syndicalistes suspendus », *El Watan*, 4 March 2013

Whether a union has a legal existence or not, its members are also subject to harassment by the Algerian authorities who do not protect them. For example, the independent Trade Union House in Dar El Beida was burgled twice on 3 and 8 May 2012, after which the SNAPAP filed a complaint that remained unanswered. Other litigation related to the administrative closure of the House of associations in Oran in 2002 and the Trade Union House in Algiers in 2010, for example, are still pending. In addition to failing to protect the trade unionists, public authorities prevent them from exercising their mandate. Indeed, the authorisation of the administration is necessary for holding a meeting, a street demonstration or a conference. However, in practice the government never authorised the holding of such events, even when the trade union was able to obtain a legal existence. So it is very limited in its activities and has no other choice but to work without permission. But, the police often uses disproportionate violence against strikers who protest peacefully and who are often arrested and prosecuted. The union activists are often arrested and taken to the police station without any charges being brought against them. On 25 February 2013, various independent unions (SNAPAP, Judiciary Workers Federation, pre-employment ...) attempted to hold a rally in front of the headquarters of the Ministry of Labour, Employment and Social Security in Algiers. However, once again, a large number of police had been deployed there to prevent the event from taking place. The police then proceeded to arrest more than fifty unionists before driving them to different police stations in the city. This peaceful demonstration was aimed at calling for the Algerian authorities to respect the freedom of association and to reinstate the workers fired for their unionist activities³⁵⁵.

Finally, foreign unionists are «undesirable» in Algeria. The Algerian police arrested three foreign unionists in their hotel on the morning of 20th February 2013. The unionists had come especially to Algiers to hold a two-day meeting at the Trade Union House with SNAPAP members. Police also surrounded the House, preventing the activists from attending. They arrested activists like Abdelkader Kherba, and drove them to the Bab Ezzouar police station. The reasons advocated by the DGNS for the arrests were that the meeting had not been previously authorised³⁵⁶. A rally was also intended to take place in Laghouat. The police used tear gas bombs to break up the unemployed people. Many of those arrested were taken to the Laghouat gendarmerie. Following the forceful intervention of the police, riots broke out in the neighbourhoods of (kser) Farroudj and (kser) Bezaim³⁵⁷.

³⁵⁵ BSIKRI (M.), « Sit-in devant le ministère du Travail : des dizaines de syndicalistes arrêtés à Alger », *El Watan*, 26 February 2013

³⁵⁶ DJEDJIGA (R.), « Le 1er forum maghrébin de lutte contre l'emploi empêché : 11 syndicalistes étrangers et deux algériens arrêtés », *El Watan*, 21 February 2013

³⁵⁷ TALEB (B.), « Laghouat : des dizaines d'émeutiers présumés arrêtés », *El Watan*, 20 February 2013

Chapter 10 - ECONOMIC AND SOCIAL RIGHTS



The Algerian Constitution provides many economic, social and cultural rights such as the right to education (Article 53), the right to health (Article 54), the right to work (Article 55), freedom of association (Article 56) and the right to strike (Article 57).

These rights are also protected internationally by the International Covenant on Economic, Social and Cultural Rights of 16 December 1966, ratified by Algeria on 12 September 1989. This ensures that many rights such as the right to work (Article 7), the right of «any person to form with others trade unions and join the trade union of his choice» (Article 8 § 1, a), the right to strike (Article 8 § 1, d)), the right to social security (Article 9), «the right of everyone to an adequate standard of living» (Article 11), the right to health (Article 12), the right to adequate

housing (Article 11), etc. The ACHPR provides for the right to economic, social and cultural development (Article 22), the right to work (Article 15), the right to health (Article 16) and the right to education (Article 17).

Algeria is a country rich in natural resources. In 2011, oil exports have generated an enormous profit of 71.44 billion dollars against 56.12 billion dollars in 2010³⁵⁸. Algeria is Europe's second largest supplier of gas and thirteenth oil supplier³⁵⁹. However, the socio-economic situation of the population is alarming. The housing crisis, the high unemployment, poor working conditions are the daily lives of many Algerians.

Indeed, price inflation, especially for agricultural products, has stagnated at around 10% for 2012³⁶⁰. This puts families in a difficult situation. Many demonstrations were organised to protest against the rising cost of living: as per security services, more than half of the many protest activities organised in 2011 aimed to denounce poor living conditions³⁶¹.

To appease the demands of the population, especially in response to the mobilisation of the society by the CNCD, the Council of Ministers decided in late 2011 to raise the minimum amount of pensions and retirement allowances to DZD 15,000³⁶². The national guaranteed minimum wage (SNMG) increased from DZD 15,000 to DZD 18,000 gross from 1 January 2012³⁶³. No long-term solution has, however, been implemented by the government.

Moreover, corruption is a rooted phenomenon that plagues Algerian society, and for many Algerians, it is one of the reasons for their poverty. This was confirmed by the NGO Transparency International's report published in December 2012 in which the NGO gave Algeria a grade of 3.4 / 10 on corruption (against 2.9 / 10 in 2011)³⁶⁴.

³⁵⁸ LAKSACI (M.), « L'économie algérienne consolide sa position financière externe en 2011 », *EL Moudjahid*, 24 February 2012

³⁵⁹ « Énergie : Les exportations d'hydrocarbures en hausse de 27% en 2011 », *El Khabar*, 6 February 2012

³⁶⁰ REZOUALI (A.), « Les causes de l'inflation ne sont pas conjoncturelles », *El Watan*, 16 January 2013

³⁶¹ ATHALI (A.), « 10.910 actions de protestation en Algérie en 2011 », *Algérie 1*, 6 April 2012

³⁶² « Conseil des ministres : les petites pensions de retraites relevées à 15 000 DA », *Algérie 1*, 18 December 2011

³⁶³ Presidential Decree No.11-407 of 29 November 2011 fixing the national guaranteed minimum wage, OJ No. 66 of 4 December 2011, p. 4

³⁶⁴ Transparency International, *Corruption Perceptions Index 2012*, 2012, available at: <http://cpi.transparency.org>

The ill-being of the population is justified by the socio-economic situation of the country, mainly because of the worrying health system (1) the difficulty to find a job and poor working conditions (2), the housing crisis (3) that each year result in many young Algerians leaving the country: the harragas (4).

1. Violations of the right to health: the deterioration of the medical sector

The population is experiencing serious difficulties in finding the drugs they need. Families, especially those living in rural areas³⁶⁵, connaissent des difficultés pour accéder à des structures médicales spécialisées en raison de leur nombre insuffisant et de leur mauvaise répartition sur le territoire national.

1.1. Drugs shortage

Algeria is frequently experiencing significant shortages of drugs that families often seek to overcome by obtaining them through relatives living abroad. According to the Minister of Health, these repetitive shortages are due to the mismanagement of the distribution of medicinal drugs. During his visit towards the end of 2011 to the Nafisa Hamoud Hospital in Hussein Dey, the Minister of Health reported that «75,000 boxes of products intended for anaesthesia and resuscitation purposes located at the central pharmacy are outdated»³⁶⁶. To determine the reasons for this shortage, the Ministry of Health ordered an investigation³⁶⁷ which led to the withdrawal of 230 authorisations to drugs distributors³⁶⁸. Some distributors benefit from the shortage to sell medicines at high prices which they had stored when they were no longer available³⁶⁹, which highlights the mismanagement desired by the retailers who prefer to sell medicinal drugs and earn profits for their own purposes. In addition, forty-six managers of public hospitals were suspended for not submitting the medical needs of their hospital for the year 2012³⁷⁰.

³⁶⁵ Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights*, 7 June 2010, E/C.12/DZA/CO/4, p. 6, § 20

³⁶⁶ ABBES (Z.), « Pénurie de médicaments : Ould Abbès pointe du doigt les hôpitaux », *Algérie 1*, 25 August 2011

³⁶⁷ « Pénurie de médicaments : Le ministère de la Santé et les douanes ouvrent une enquête », *Algérie 1*, 19 October 2011

³⁶⁸ « Retrait d'agrément à 230 distributeurs de médicaments », *Algérie 1*, 1er February 2012

³⁶⁹ CHEKIR (M.), « Ould Abbès assure que le problème sera réglé avant fin avril », *La Tribune Online*, 30 March 2012

³⁷⁰ APS., « Santé : « Quarante-six directeurs d'hôpitaux suspendus « provisoirement » de leurs fonctions », *El Watan*, 26 March 2012

This situation seriously endangers patients undergoing treatment, especially people with HIV³⁷¹. As a result, the status of the Central Pharmacy of Hospitals (PCH) has been expanded. It continues to provide hospitals with medicines, but can now also sell drugs to private pharmacies if they are out of stock³⁷². However, the PCH only monitors the supply of drugs, but does not control their use by health professionals. As a consequence, some workers in the health sector have organised a black market for reselling stolen drugs³⁷³.

1.2. The lack of health infrastructures

The public also have to deal with the lack of specialised facilities to have access to healthcare. The 2010-2014 five-year plan with a budget of \$ 619 billion, plans for the construction of 172 hospitals, 45 specialised facilities, 377 polyclinics, 1,000 treatment rooms and 17 paramedical training schools across the entire country³⁷⁴. But the plan cannot compensate for the lack of infrastructure and medical equipment. There is a frightening lack of radiotherapy centres, which does not allow patients to undergo regular and continuous treatments³⁷⁵. Many patients are forced to leave their families for treatment in Algiers. In addition to the blatant lack of equipment, there is poor training in the use of sophisticated equipment. In the absence of specialists and training for existing medical staff, very expensive devices remain unused or used below their capacity. Moreover, the lack of hygiene in hospitals and among the medical staff (no use of gloves, no sterilisation of medical equipment, different test results among laboratories)³⁷⁶ poses health problems that can cause hospital-acquired infections. Consequently, the patients often complain about the lack of attention and poor reception in hospitals and the doctors about their poor working conditions, and tensions between doctors and patients³⁷⁷ can sometimes lead to assaults. Thus, the safety of employees in the hospitals has always been part the health sector strikes claims since December 2012³⁷⁸.

1.3. The lack of medical staff

Hospitals are understaffed with regards to the national population. Aware of the difficulties

³⁷¹ ABBES (Z.), « Oran : Des malades du SIDA protestent contre la pénurie de médicaments », *Algérie 1*, 28 July 2011

³⁷² « Les PCH se dotent d'un nouveau statut », *El Moudjahid*, 12 February 2012

³⁷³ GUEMACHE (H.), « Les médicaments essentiels sont disponibles », *TSA*, 29 May 2012

³⁷⁴ OUL ALI (S.), « La Réforme hospitalière attend sa concrétisation », *La Tribune Online*, 22 March 2011

³⁷⁵ KOURTA (D.), « La longue et rude attente des patients », *El Watan*, 17 April 2012

³⁷⁶ NOUREDDINE (B.), « L'insalubrité est criante, trop criante ! », *El Watan*, 20 December 2012

³⁷⁷ KAHLAL (C.), « Les médecins résidents en grève illimitée à partir de demain », *Le Midi Libre*, 26 March 2011

³⁷⁸ RAHMANI (D.), « Le SNPSP décide de la grève d'une journée le 18 décembre », *El Watan*, 11 December 2012

of carrying out their work properly in Algeria, many young doctors prefer to settle abroad. In recent years, more than 6,500 Algerian doctors have left their country to work in France³⁷⁹. Consequently, the medical staff is mainly composed of temporary workers with no decision-making power and a lack of qualifications. Algeria also calls upon foreign doctors. Algeria has notably signed a cooperation agreement with Cuba to assign a Cuban medical team of forty people at the Regional Cancer Centre of Ouargla³⁸⁰.

The lack of specialists is also a major problem. The Oued R'hiou and Mazouna hospitals are illustrative examples in that they have no specialist doctor in their paediatric section³⁸¹. Another example: lack of professional training has prevented professional from properly treating patients with hepatitis³⁸². The management of the health system leads to many strikes and demonstrations. According to Farid Chaoui, professor of medicine, the management of the current health system is «comparable to the 1980s»³⁸³. If the access to health care poses a problem, the employment situation in the medical sector is equally problematic due to the poor working conditions.

2. Violations of the right to work: the employment situation in Algeria

2.1. Poor working conditions

The employment situation in Algeria is catastrophic. Indeed, the working conditions are difficult and wages are low and often paid late. Moreover, social protests and strikes of Algerian Workers are regular and affect various sectors. It is the case for example of people working in the oil and gas fields in southern Algeria, in Hassi Messaoud, In Aménas, Hassi R'Mel, etc. People work in very harsh climate conditions, where safety rules are not always respected. Salaries vary depending on whether the worker is Algerian or an expatriate, the latter being better paid even when the tasks are the same. Finally, delays in the payment and in vacation days are very common.

Court clerks have also claimed the best working conditions. In July 2012, a national strike of clerks ended after 100 days over salary scale review and increase (the basic salary of a clerk

³⁷⁹ BENAMAR (M.), « Plus de 6 500 médecins algériens ont émigré en France », *TSA*, 12 March 2012

³⁸⁰ « Ouargla : plus de 40 praticiens cubains en renfort au centre anticancéreux », *L'Expression*, 4 December 2012

³⁸¹ ISSAC (B.), « Santé : les hôpitaux souffrent d'un déficit en spécialistes », *El Watan*, 26 March 2012

³⁸² SAFTA (D.), « Hépatites : le manque de formation pénalise les malades », *Liberté*, 9 January 2013

³⁸³ MAKEDHI (M.), « La gestion du système national de santé est comparable à celle des années 1980 », *El Watan*, 9 July 2012

is DZD 17,000 and DZD 23,000 for the highest grade), a special status, overtime pay, the possibility of taking annual leave throughout the year, the right to promotion by seniority and to lodging like other employees of the sector. On 5 May 2012, seven clerks started a hunger strike to draw public attention to their situation. In April 2013, workers of Algier's urban and suburban transport company (ETUSA) went on a new strike to protest against insecurity in the exercise of their functions especially at night, a salary review, reduction of working hours and the reinstatement of the security guards who were fired without notice. Having a job is therefore not a guarantee of financial stability, and these examples are not trivial; other professional bodies regularly organise peaceful rallies and strikes to demand better working conditions. The high rate of unemployment is also a source of concern, and unemployed people, particularly in the South, regularly organise protests to alert policy makers about their situation.

2.2. Unemployment

According to the National Observatory of Statistics (ONS) and the Ministry of Labour, 1.072 million people were affected by unemployment in 2012 out of an estimated work force of 9.4 million³⁸⁴. Young people under thirty, women and young graduates are those who struggle most to find a job. A pre-employment contract aiming to enable graduates to gain work experience in order to facilitate their integration into the world of work has been put in place. It is renewable for a maximum of three years, until the age limit of 35. However, this kind of contract mainly benefits the employer who is exempted from taxes and receives subsidies. Pre-employment contract salaries oscillate between DZD 8,000 and DZD 15,000, while the minimum wage is DZD 18,000³⁸⁵, and are fully paid by the State during the first year. Thereafter, the salary is shared between the employer and the Governor. In addition to the low salary, this contract does not allow young workers to contribute to their retirement. In addition, in the event that the employer decides to hire the young employee under a permanent contract, he is not required to increase his salary. In practice, pre-employment contracts rarely lead to the signing of a permanent contract, as the employer prefers to sign a new contract with a fresh graduate to preserve his tax advantages. The pre-employment contract aims only at decreasing the outward appearance of unemployment rate without going to the source of the problem. To challenge this system, the National Committee of Pre-employment and Social Safety Net, affiliated with the SNAPAP, organises national actions across all the regions since 2011.

³⁸⁴ MEBTOUL (A.), « Impossibilité économique pour le gouvernement de créer 1 million d'emplois durant le 1er semestre 2011 », *Reflexion*, 10 August 2011

³⁸⁵ Presidential Decree No.11-407 of 29 November 2011 *fixing the national guaranteed minimum wage*, JO No. 66 of 4 December 2011, p. 4

Furthermore, to fight against young unemployed people under thirty with no university degree, the government has amended the law on vocational learning in early 2012 and increased the age of access to vocational training from twenty five to thirty years old. However, these vocational courses do not offer genuine career prospects since they are often seasonal. Training is sometimes offered and can facilitate access to microcredit and allow the creation of new jobs, but only in the field of crafts (weaving, embroidery, pottery) and small-scale industry (manufacturing of pasta, couscous, breads and traditional cakes). Access to microcredit is often presented as a solution to the problem of unemployment and is encouraged by the government. The National Agency for the Support Youth Employment (ANSEJ) has funded approximately 43,000 microcredit projects. The main beneficiaries of microcredits are women who can have access to employment and get a certain financial independence³⁸⁶. However, the effectiveness of this system is relative to its long-term viability as micro-enterprises created are not sustainable and many new companies close³⁸⁷ (from inadequate training, strong competition, debt, etc.). Moreover, the allocation of unemployment insurance is governed by conditions which are too restrictive³⁸⁸, limiting beneficiaries.

Generally, unemployment causes great distress among the population. Early January 2011, in Saïda, a young 27 year old man, hopeless because he could not find a job, committed suicide³⁸⁹. Unable to find a job with a decent salary, or to supplement inadequate wages (according to the ONS, the average salary in Algeria is DZD 30,000), the population turns to informal employment.

2.3. Informal employment

According to the Minister of Commerce, «*half the turnover of Algerian economic players (traders and companies) comes from the informal economy*». Informal employment would have generated \$ 155 billion of revenues in the last three years and would represent between 20-40% of the gross domestic product (GDP)³⁹⁰.

Informal employment tends to mingle with formal employment. Indeed, it is not uncommon for traders registered with the commercial register to exercise undeclared activity alongside it. This

³⁸⁶ LARBI (F.), « ANGEM : Plus de la moitié des projets réalisés par des femmes », *El Moudjahid*, 11 March 2012

³⁸⁷ KHRIS (B.), « Plus de 10 000 micro entreprises dissoutes », *Liberté*, 24 May 2012

³⁸⁸ Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights, mission in Algeria*, 7 June 2010, E/C.12/DZA/CO/4, p. 4, § 12

³⁸⁹ IBN KHALDOUN (M.) « Algérie : Un chômeur s'immole par le feu à Saïda », *Algérie 1*, 10 January 2012

³⁹⁰ « Le marché informel : L'Etat impuissant ? », *Algérie 1*, 12 March 2012

phenomenon is observed mainly among fruit and vegetable merchants who prefer to sell their products outside of the formal markets. In this way, they avoid the rental and tax costs, and can therefore sell their goods cheaper, which distorts competition. The sales of fruit and vegetables represent 35% of the informal market. Given this situation, the authorities have decided to gradually integrate pedlars into covered markets to allow them legalise their activities³⁹¹.

Moreover, most people do not use invoices for their transactions in Algeria and contribute to the development of the informal market. For 2012, the total amount of non-invoiced transactions amounted to 50 billion dinars (against 46 billion dinars in 2011)³⁹². In addition, the use of credit cards in transactions remains marginal³⁹³, and very few merchants have electronic payment terminals. Thus, the majority of payments are made in cash which makes them impossible to track and check.

To fight against informal work, the Minister of Finance announced the creation of a tax investigation brigade whose mission is to «track» the external signs of wealth³⁹⁴. Besides this brigade, however, it appears essential to inform and educate the merchants about the law in this area so they can comply with their legal obligations.

The extent of informal employment is difficult to assess, but it has serious consequences as it deprives many families of their right to social security. The Minister of Interior did not bring fundamental solutions to this problem; he simply stated «*informal trade is socially useful because it provides a livelihood for tens of thousands of families*». Informal work makes the workers a very vulnerable population. The situation of stonemasons in T'Kout in the Batna Province, perfectly illustrates the risks of informal work: to tackle unemployment, many men turned to this profession that has very significant health risks. If hygiene rules are not complied with, the workers are exposed to silicosis, an illness responsible for the death of eighty-eight stonemasons in 2012. Precarious working conditions of informal workers expose them to the risk of contracting this illness and depriving their families of all resources if the person dies. In fact they do not receive any death benefit, burial funding, or premiums for widows and orphans. On 30 August 2010, the Executive Decree on the protection of stonemasons was adopted. This decree, added to the Labour Code and Law No. 90-03 on the labour inspectorate which already guaranteed the right to health and safety, did not establish tangible actions to protect stonemasons. Indeed,

³⁹¹ CHERIFA (K.), « Lutte contre l'informel, les nouveaux marchés sont-ils une alternative ? », *El Watan*, 17 April 2012

³⁹² KHRIS (B.), « Près de 11 000 commerçants fraudeurs recensés », *Liberté*, 16 January 2013

³⁹³ LAMRIBEN (H.), « Moyens de paiement électronique : l'Algérie à la traîne », *El Watan*, 3 July 2012

³⁹⁴ BERKOUK (S.), « Une inflation incontrôlable », *El Watan*, 31 December 2012

in practice neither the Work Inspectorate nor the Occupational Medicine Services, have the human and material resources to carry out check³⁹⁵. Without legal employment, it is difficult for Algerians to prove the stability of their financial situation and find housing.

3. Housing problems

Unemployment and informal employment also have implications for the possibilities of access to housing in a context of crisis. Although the President of the Republic has announced the construction of 1.2 million housing units for the five-year period of 2010-2014, the housing crisis has yet to be resolved.

3.1. Insufficient housing

In her report dated 26 December 2011, the UN Special Rapporteur on housing praised the Algerian government's efforts for building new houses³⁹⁶. For the five-year period of 2010-2014, more than 3,700 milliard dinars were allocated to construct 1.2 million new housing. However, many Algerians are still waiting for accommodation, and it is still common for entire families to live together (mothers-in-law, daughters-in-law and grandchildren) and adults approaching their thirties still living with their parents and unable to have their own home to get married. While it is easy to find official figures on the number of housing built by the State, there is no official data on the number of applicants for housing or their insufficient number of housing or their quality³⁹⁷. To overcome this lack of information, the Special Rapporteur on adequate housing has proposed to set up a unified national file that would record each application for housing (identity of the applicant and location of their residence at the time of application). This file should be public and accessible on websites or in provinces and districts. Such a file would also avoid fraud.

One of the major problems is the housing allocation process. Indeed, the institutions in charge of providing housing, such as the Daïra Committee, have much discretionary power, which

³⁹⁵ ZERGUINE (K.), « Le décret exécutif 10-201 relatif à la protection des tailleurs de pierres, une supercherie juridique », *El Watan*, 10 March 2012

³⁹⁶ Report presented by Raquel ROLNIK, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, mission Algeria, 26 December 2011, A/HRC/19/53, § 20

³⁹⁷ Report presented by Raquel ROLNIK, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, mission Algeria, 26 December 2011, A/HRC/19/53, § 22

promotes favouritism and corruptio³⁹⁸. The Committee on Economic, Social and Cultural Rights has also expressed its concern following «reports of favouritism in relation to the allocation of social housing units, which is not transparent and equitable»³⁹⁹. For example, Lyès Benidir, the Director of the National Agency for the improvement and development of housing (AADL), acknowledged having ignored the procedures for housing allocation⁴⁰⁰. The obscurity of these methods leads to many tensions within the population. Around sixty people have demonstrated and blocked access to the N12 east of Boumerdès in early April 2012. These social housing applicants had had their applications accepted in June 2011, but had not yet received the keys and were still waiting to move into their new accommodation⁴⁰¹. Violent clashes between people waiting to receive their housing and the police often accompany the publication of the list of social housing recipients⁴⁰². Indeed, having one's name on a list is not a guarantee for receiving accommodation due to corruption. In fact, the housing supposedly for people on the waiting list is rented out at high rates to relatives of the administration's personnel. In addition, the law provides for reserving at least 40% of public rental housing (LPL) to people under 35 years of age, while most people in urgent need of housing are between 35 and 50⁴⁰³.

People who do not find housing move into precarious and unsanitary homes in the outskirts of the cities.

3.2. Forced evictions generating insecure settlements and slums

The settlement of families in slums is not an isolated case and is far from being a temporary situation; quite the contrary: real slum cities exist in Algeria. The situation of forced evictions is alarming, especially those made during the winter⁴⁰⁴. The evictees are left without shelter and settle in makeshift housing and slums. The Les Amandiers neighbourhood in Oran is one of the

³⁹⁸ Report presented by Raquel ROLNIK, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, mission Algeria, 26 December 2011, A/HRC/19/53, § 30

³⁹⁹ Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights, mission in Algeria, 7 June 2010, E/C.12/DZA/CO/4, p. 5, § 18

⁴⁰⁰ HADJAM (Z.), «Selon le directeur général de l'AADL : «1 300 logements seront livrés à Alger en 2012»», *El Watan*, 18 December 2012

⁴⁰¹ KOUBABI (R.), « Bordj Menâiel (Boumerdès) : la RN12 fermée par des mal-logés », *El Watan*, 4 April 2012

⁴⁰² REZZAG SALEM (Y.), « Neuf blessés et une tentative de suicide », *El Watan*, 4 February 2012

⁴⁰³ Report presented by Raquel ROLNIK, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, mission Algeria, 26 December 2011, A/HRC/19/53, § 31

⁴⁰⁴ Report presented by Raquel ROLNIK, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, mission Algeria, 26 December 2011, A/HRC/19/53, § 47

largest slums of the city, with more than 9,000 families living there. In July 2006, a large-scale relocation of residents was launched (special programme for reducing precarious housing, RHP). However at the end of January 2013, 6,000 families were still awaiting housing⁴⁰⁵.

To solve the problem of precarious housing in urban areas, local authorities develop rural housing construction to decongest the city. However, most often the construction sites are not finished⁴⁰⁶. For example, following the deadly earthquake in Boumerdès in May 2003, 15,000 temporary cabins were built to temporarily house families. While the life of the cabins is about four years, the families have not been relocated and are still living in degraded cabins ten years later. The Boumerdès earthquake is also indicative of the poor housing construction quality and the accompanying corruption. It is clear that if safety standards were more respected, human and material damage would have been less severe.

3.3. Poor quality of houses built

Most new homes are built with sloppy and poor quality materials, which endanger their occupants. On 13 March 2013, a house collapsed in Casbah in Algiers due to lack of maintenance. The nineteen families, who lived there, were left homeless, including a heavily pregnant woman. The families had alerted the authorities on several occasions about the risk of collapse. Firefighters had passed a week before to place rafters. On the night of 13 March, the sleeping inhabitants were suddenly awakened by the sound of falling rocks; they just had time to get out of the house before it collapsed. The nineteen families, women and children took refuge in a disused shop in the Casbah, with no water, no gas and no electricity. The families turned to the Mayor, who replied that it was not within his jurisdiction, and the Governor, who told them that he could do nothing for them. In addition, the shop owner, who learned that his place was occupied by the homeless families, asked them to leave and threatened to throw them out.

Many homes are old and dilapidated. Power cuts are frequent and cause running water cuts, as was the case during the summer of 2012 when the temperature soared into the 40°C.

In addition to the creation of new accommodation, rehabilitation works are necessary, but these works are taking an eternity, and weather conditions are causing more damages to the houses. Such was the case in Constantine where snowfall and rain in early 2012 have resulted in the

⁴⁰⁵ S.O.A., « Le problème du bidonville des Amandiers, réglé à la fin de l'année », *La Tribune Online*, 23 January 2013

⁴⁰⁶ KHEIREDDINE (S.), « Constructions inachevées : à l'origine de la laideur urbaine », *El Watan*, 14 March 2012

partial collapse of houses and floods⁴⁰⁷. Due to the poor quality of materials, and lack of maintenance, even new homes are much degraded and do not «age» well.

To put an end to uncontrolled construction and the non-compliance with safety rules and standards for buildings constructions, a large operation for regularisation was launched across the country in May 2009 by the Minister of Housing and Urban Development. End of March 2012, the directors of urban planning and construction (UCR) registered more than 150,000 regularisation applications⁴⁰⁸. However, most homeowners are reluctant to undertake works because of the costs they have to bear alone. The high rate of unemployment, combined with the housing crisis, is a source of frustration for young Algerians and increases illegal immigration.

4. The situation of harragas

Every year, the lack of prospects in Algeria leads to many young Algerians who yearn for a better life to leave the country. They do not hesitate to put their lives in danger to achieve their goal. Bennour's mother remembers every day what her son told her five years ago before leaving the country: «Mum, as soon as I arrive in Europe, I'm going to work and I will buy you your house». Bennour was supposed to reach Europe by passing through Turkey and then Cyprus. But his family has not heard from him since. Far from being an isolated case, Bennour's decision is that of many other young Algerians who want to help their families financially and to find a decent job.

Since 2005, the number of people crossing the Mediterranean Sea to go to France is increasing. To confront this phenomenon, the Algerian legislator decided to criminalise harraga, namely illegal immigration. In 2008, he had already passed a very repressive law on the entry and residence of foreigners.

On 25 February 2009, a law amending the Algerian Penal Code came into force and now penalises illegal immigration⁴⁰⁹. This law provides a «two to six months prison sentence and a fine of DZD 20,000 to DZD 60,000 against anyone leaving the country through illicit means», using «fraudulent means» or «taking passage ways other than border posts». This modified article of the Penal Code raises many questions. Its geographical scope is unclear, for example, it does not determine from what point in national waters an intercepted boat can be considered

⁴⁰⁷ ABBES (Z.), « Intempéries : Effondrement partiel d'une dizaine d'habitations à Constantine », *Algérie 1*, 11 February 2012

⁴⁰⁸ « 151.509 demandes de régularisation déposées en 2012 », *El Moudjahid*, 28 April 2012

⁴⁰⁹ Article 175 bis of the Penal Code

as leaving the territory illegally⁴¹⁰. This legislation is contrary to the freedom of movement guaranteed by Article 44 of the Constitution⁴¹¹ and Article 12 of the ICCPR⁴¹².

Thus, instead of finding a solution to this problem by implementing integration policies to discourage the youth from putting their life in danger by illegally leaving the country, illegal immigration is now criminalised. The criminalisation of illegal immigration does not prevent the development of the phenomenon and the number of arrests among harragas remain frequent. In practice, harragas are often prosecuted for other charges, for example, when possessing foreign currency at the time of their arrest which has not been acquired «*through authorised channels or authorised by the Bank of Algeria*»⁴¹³. The penalties can reach seven years in prison and a fine at least equal to twice the amount involved. The prison sentences are rare, probably for fear of the families' reactions.

Arrested migrants are generally young men aged between twenty and thirty. In October 2012, the authorities arrested three groups of illegal migrants off Cap de Garde (in the province of Annaba) in the period of a week. Most of them were from the province of Boumerdès and were all under thirty⁴¹⁴. Besides the criminalisation of illegal immigration, the Algerian government has implemented a security and crisis unit composed of representatives from the Directorate of National Security, the National Gendarmerie and the Coast Guard. The purpose of this unit is to deter young people from leaving the country illegally. Finally, the Algerian authorities do not conduct any extensive investigations to find the missing people at sea, leaving families in anguish and uncertainty of ever seeing their loved ones again.

⁴¹⁰ ZERGUINE (K.), « Criminalisation de la harraga : quel texte pour quels objectifs », *Le Fil d'actualité*, March 2013

⁴¹¹ Article 44 of the Constitution: «Any citizen in possession of his civil and political rights shall be entitled freely to choose his place of residence and to travel within the national territory»

⁴¹² Article 12 § 1 of the ICCPR: «Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement [...]»

⁴¹³ ZERGUINE (K.), « Criminalisation de la harraga : quel texte pour quels objectifs », *Le Fil d'actualité*, March 2013

⁴¹⁴ « Algérie : 68 harragas interceptés en moins de 48h », *Algérie focus*, 7 October 2012

LIST OF ABBREVIATIONS AND ACRONYMS

- AADL:** National Agency for the improvement and development of housing
- AALC:** Algerian Anti-Corruption Association
- ACHPR:** African Charter on Human and Peoples' Rights
- ANP:** People's National Army
- ANSEJ:** National Agency for the Support of Youth Employment
- APC:** People's Municipal Assembly
- APN:** People's National Assembly
- BMPJ:** Mobile Brigade of the Judicial Police
- BRI:** Research and Investigations Brigades
- (The) Charter:** Charter for Peace and National Reconciliation
- CFDA:** Collective of Families of the Disappeared in Algeria
- CLA:** Council of Secondary Schools in Algiers
- CNCD:** National Coordination for Change and Democracy
- CNCPDH:** National Consultative Commission for the Promotion and Protection of Human Rights
- CNDDC:** National Coordination for the Defence of the Rights of the Unemployed
- CNES:** National Economic and Social Council
- CSM:** High Judicial Council
- DRS:** Department of Intelligence and Security
- DUC:** Directorate of Urban Development and Construction
- DZD:** Algerian Dinar
- EMHRN:** Euro-Mediterranean Human Rights Network
- ENTP:** National Well Engineering Company
- EPA:** Protestant Church of Algeria
- FIDH:** International Federation of Human Rights
- FIS:** Islamic Salvation Front
- FNA:** Algerian National Front
- HRW:** Human Rights Watch
- ICC:** International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
- ICCPR:** International Covenant on Civil and Political Rights
- ICESCR:** International Covenant on Economic, Social and Cultural Rights
- ILO:** International Labour Organization

LADDH: Algerian League for the Defence of Human Rights

LPL: Public Renting Houses

MJIC: Independent Youth Movement for Change

NGO: Non-Governmental Organization

NHRI: National Human Rights Institutions

NHRO: National Observatory of Human Rights

OJ: Official Journal

ONS: National Observatory of Statistics

PCH: Central Hospital Pharmacy

RAJ: Youth Action Coalition

RCD: Rally for Culture and Democracy

SESS: Union of Higher Education Teachers

SNABADR: Autonomous National Union Bank of Agriculture and Rural Development

SNAP: National Autonomous Union of Postmen

SNAPAP: National Autonomous Union of Public Administration Staff

SNATFTPE: National Autonomous Trade Union of workers in paper processing and packaging

SNATNA: Autonomous Union of Algerian Cleaning Workers

SNATP: National Autonomous Union of Postal Workers

SNM: National Magistrates Union

SNMG: National Guaranteed Minimum Wage

SNPSSP: National Union of Public Health Specialists

SNTFP: National Union of Vocational Training Workers

SRATCBD: Autonomous Regional Union of Construction of Wood and its Derivatives

UDHR: The Universal Declaration of Human Rights

UGTA: General Union of Algerian Workers

UN: United Nations

UNBA: Algerian Bar Association

UNWGEID: United Nations Working Group on Enforced or Involuntary Disappearances

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