



# Universal Periodic Review: Algeria

## Third cycle

### Submission to the summary of stakeholders' information

**Alkarama Foundation – 22 September 2016**

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1. The present contribution falls within the framework of the third cycle of the Universal Periodic Review (UPR) pertaining to the general human rights situation in Algeria and takes into account the recommendations made in 2012.

## **1. General context and framework**

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### **1.1 General political context**

2. The 2014 presidential election in Algeria was undermined by a high abstention rate. Despite his poor health, and although he committed to not run for a fourth term, President Abdelaziz Bouteflika announced on February 22, 2014 that he would stand for election. On April 17, 2014, he was re-elected with 81.53% of the votes. However, the opposition contested the election results and denounced widespread fraud.

3. The country continues to deal with the consequences of a decade-long civil war that caused nearly 200,000 casualties during the 1990s, including thousands of disappearances<sup>1</sup>. The amnesty granted to both State forces and armed groups members by the 2006 Charter for Peace and National Reconciliation, ultimately created a climate of general impunity.

### **1.2 Legal and constitutional framework**

4. On February 7, 2016 the Parliament adopted, without discussion, the draft constitution announced in 2011 by the President - under the pressure of the Arab spring. This reform reintroduces the two-term presidential limit (article 179), which the President lifted in 2008 in order to be re-elected.

### **1.3 Scope of international obligations**

5. During the first cycle, Algeria agreed to “take measures to ratify the International Convention for the Protection of All Persons from Enforced Disappearances”<sup>2</sup> (ICPPED) but did not ratify it. During the second cycle, all recommendations related to ratification of international human rights instruments – including the Rome Statute of the International Criminal Court – were only noted<sup>3</sup>.

### **1.4 Institutional framework, human rights infrastructures and general policy measures**

6. On 25 March, 2011 The National Consultative Commission for Promotion and Protection of Human Rights (NCCPPHR) was established. In 2008, the International Coordinating Committee of National Human Rights Institutions (ICC) downgraded it to status B, since it does not comply with the Paris Principles, especially in terms of independence from the executive power.

7. After the 2014 constitutional review, the NCCPPHR was renamed National Human Rights Commission (NHRC). According to authorities, a law that would establish its composition, organization and functioning, as well as procedures for designating its members, is being prepared<sup>4</sup>.

## **8. Recommendations :**

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<sup>1</sup> Between 1992 and 1998, 8.000 to 20.000 persons – depending on sources - were arrested or abducted by Algerian security services. To date, the families of victims have received no information on their whereabouts. Enforced disappearance was practiced on such a large scale during this period that the United Nations Working Group on Enforced and Involuntary Disappearances (WGEID) described it as a crime against humanity in 2004.

<sup>2</sup> Report of the Working Group on the Universal Periodic Review, *Addendum*, (A/HRC/21/13/Add.1), Recommendation No 5 (France), para. 23.

<sup>3</sup> Recommendations 129.1 (Slovakia, Slovenia, Spain, Hungary, Costa Rica, Latvia), 129.2 (Slovakia), 129.3 (Slovakia), 129.4 (Slovenia, Sweden), 129.5 (Uruguay, Chile, France), 129.6 (Iraq, Argentina, Spain), 129.7 (Uruguay), 129.8 (Iraq, Burkina Faso), 129.9 (Burkina Faso), 129.85 (Australia), 129.90 (Norway, Belgium).

<sup>4</sup> Algeria Press Service, Draft bill on organization, running of National Council for Human Rights approved, <http://www.aps.dz/en/algeria/12978-national-council-for-human-rights-draft-bill-determining-organization.-running-rules-approved> (accessed September 20, 2015).

- a) Ratify the ICPPED, the Rome Statute and the Optional Protocol to the Convention against Torture (OPCAT);
- b) Bring the NHRC into compliance with the Paris Principles.

## **2. Cooperation with human rights mechanisms**

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### **2.1 Treaty bodies**

9. Since 1989, Algeria has been a party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT) and has accepted the Committees' jurisdiction to examine individual complaints. However, Alkarama notes that the authorities refuse to cooperate with these bodies and to implement their recommendations and individual decisions.

10. The lack of cooperation is particularly visible in the cases of enforced disappearances submitted to the Human Rights Committee (HRCtee). Despite the established case law of the HRCtee, the authorities systematically use the 2006 Charter to challenge the admissibility of individual complaints.

### **2.2 Cooperation with special procedures**

11. The authorities refuse to cooperate with the special procedures despite numerous recommendations to extend a standing invitation made during the previous cycle<sup>5</sup>.

12. The refusal to cooperate also affects the implementation of the Working Group on Arbitrary Detention (WGAD)'s decisions urging the authorities to release persons arbitrarily detained, such as Djameleddine Laskri, who has been arbitrarily detained for 24 years.

13. Algeria has the fifth highest rate of cases pending before the Working Group on Enforced or Involuntary Disappearances (WGEID), with 3139 unresolved enforced disappearances due to the authorities' lack of cooperation.

14. Despite numerous reminders, the visit requested by the WGEID in 2006<sup>6</sup> was never conducted<sup>7</sup>. The authorities replied that they were not in a position "to forward all supporting documents [...] concerning outstanding cases"<sup>8</sup>. Although the Government officially invited the experts in 2014, it has not accepted the "format and purpose of the visit"<sup>9</sup>.

#### **15. Recommendations :**

- a) Implement all final recommendations and decisions of the treaty bodies ;
- b) Implement WGAD's opinions ;
- c) Clarify all cases pending before WGEID ;
- d) Cooperate, in good faith, with UN human rights mechanisms and accept the special procedures' requests for visits, especially WGEID's.

## **3. Compliance with international human rights obligations**

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### **3.1 Right to life, liberty and personal security**

#### **3.1.1 Death penalty**

<sup>5</sup> Recommendations 129.86 (Uruguay, Hungary), 129.87 (United-Kingdom) and 129.88 (Norway).

<sup>6</sup> *Annual report of the Working Group on Enforced or Involuntary Disappearances*, 18 December 2000, E/CN.4/2001/68, para. 14.

<sup>7</sup> *Annual report of the Working Group on Enforced or Involuntary Disappearances*, 28 July 2016, A/HRC/33/51, para. 30

<sup>8</sup> *Annual report of the Working Group on Enforced or Involuntary Disappearances*, 26 January 2011, A/HRC/16/48, para. 45.

<sup>9</sup> *Annual report of the Working Group on Enforced or Involuntary Disappearances*, 10 August 2015, A/HRC/30/38, para. 33; *Post-session document, 10<sup>th</sup> session* (A/HRC/WGEID/104/1), para. 10.

16. Even though Algeria has observed a moratorium on capital punishment since 1993, death penalty is still pronounced, especially in terrorism cases. Algeria merely noted the recommendations calling for the ratification of the Optional Protocol to ICCPR<sup>10</sup>.

### **3.1.2 Procedural safeguards in detention and prevention of torture**

17. Alkarama is particularly concerned by the repeated violations of article 9 of the ICCPR and has documented many cases where persons were arrested by state agents wearing civilian clothes, without presenting a warrant, disclosing their identities and informing the persons arrested or their families of the reasons of the arrest.

18. The maximum period of police detention is 48 hours. However, it can be renewed up to five times with the authorization of the Prosecutor in cases of terrorist or subversive crimes, which brings the maximum duration to 12 days. In practice, it is systematically renewed. Alkarama considers this duration to be excessive in regards to international standards established by the HRCtee, as it puts the detainee at risk of torture and ill-treatment.

19. On 23 July 2015 the Criminal Procedure Code (CPC) was amended by order No 15-02. Since then, every person held in police custody has the right to communicate with a relative or a lawyer<sup>11</sup>, but only for 30 minutes if they choose the latter.

20. Additionally, Alkarama is worried that the order requires the attendance of a police officer during the interview between the detainee and their lawyer<sup>12</sup>.

21. Alkarama notes that domestic legislation does not ensure that confessions obtained under torture are inadmissible in court, as required by Article 15 of UNCAT. Yet, many people who were sentenced on the basis of confessions obtained under torture are still being detained<sup>13</sup>.

## **3.2 Administration of justice, impunity and rule of law**

### **3.2.1 General framework**

22. Although the new Constitution enshrines the independence of the judiciary (Article 156), the executive plays a prominent role in the processes of judicial appointment and career development. The Supreme Judicial Council itself is controlled by the Executive, which appoints most of its members, when it is supposed to ensure the independence of judges<sup>14</sup>.

### **3.2.2 Problems related to the 2006 Charter**

23. The 2006 Charter, which was adopted to deal with the consequences of the civil war, remains problematic on many different levels. It offers *de facto* amnesty to members of armed group and *de jure* amnesty to all state forces and parastatal armed groups, including for serious violations of international humanitarian law and human rights such as torture, summary executions, arbitrary detention and enforced disappearances. The order declares prosecution of state forces members inadmissible before national courts, including for the most serious crimes.

<sup>10</sup> Recommendation 129.90 (Belgium, Norway).

<sup>11</sup> Art. 51. *bis* 1 : "Without prejudice to the confidentiality and proper conduct of the inquiry, the officer shall make available to the person in custody all means to immediately communicate with a person of his or her choice among his or her ascendants, descendants, siblings and spouse, and to receive visit of or make contact with his or her lawyer."

<sup>12</sup> Art. 51 *bis* 1, para. 5: "The visit shall take place in a secured space guaranteeing the secrecy of the meeting, under the eye of the police officer".

<sup>13</sup> Alkarama, *Algeria : Torture and Arbitrary Detention of Member of the Algerian League for the Defence of Human Rights for over 8 Months*, 12 October 2015, <http://en.alkarama.org/algeria/press-releases/1905-algeria-torture-and-arbitrary-detention-of-member-of-the-algerian-league-for-the-defence-of-human-rights-for-over-8-months> (accessed September 20, 2016).

<sup>14</sup> Organic Law No 04-12 of September 6, 2004 determining the composition, functions and powers of the Supreme Judicial Council.

24. Since then, the families of victims, in particular families of disappeared –whose number is estimated to 10.000 to 20.000 – are denied the right to an effective remedy. HRCTee and CAT experts pointed out that the Charter creates a climate of impunity<sup>15</sup> and recalled that for the most serious crimes, “prosecution may not be waived under any circumstances”<sup>16</sup>, that perpetrators of such crimes must be prosecuted and punished “in a manner commensurate with the gravity of the acts committed”<sup>17</sup>, and that such legal obstacles violate the principle of non-derogability<sup>18</sup>.

#### 25. **Recommendations :**

- a) Ensure compliance with Article 9 of ICCPR in all cases of arrests, namely by allowing the persons arrested to have access to a lawyer immediately ;
- b) Reduce the duration of detention in custody to 48 hours in all matters and allow immediate access to a lawyer ;
- c) Amend the CPC to exclude any evidence obtained under torture, as required by Article 15 UNCAT ;
- d) Ensure the independence of the Supreme Council of the Judiciary by guaranteeing that the majority of its members is elected ;
- e) Repeal Article 45 of the 2006 Charter, which offers amnesty to perpetrators of serious violations of humanitarian law and human rights ;
- f) Guarantee the right of the families of disappeared to an effective remedy, as required by Article 2§3 of ICCPR.

## **4. Freedom of expression, association, peaceful assembly and the right to participate in public and political life**

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### **4.1 General framework**

26. Article 49 of the Constitution enshrines the right to assembly by providing that “the right to peaceful assembly is guaranteed for the citizen under the terms of the law, which lays down the procedures for its exercise”. However, the laws of application render this principle ineffective.

27. The exemption provisions of the 1992 decree on the state of emergency<sup>19</sup>, repealed in 2011, are now part of ordinary law. Laws No 12-04 on political parties, No 12-05 on information and No 12-06 on associations were passed in 2012 and fully incorporate the restrictions provided for in the aforementioned decree. These laws maintain the ban on demonstrations in the capital and on creating a political party without approval of the Executive.

28. During the last UPR, Canada called upon Algeria to immediately take measures to bring the law in line with the country’s international obligations in order to fully ensure freedom of expression, including on the Internet, peaceful assembly and association<sup>20</sup>. Although Algeria replied that this recommendation had already been implemented, Alkarama notes that these restrictions on freedoms have instead been strengthened.

### **4.2 Limitations to freedom of expression, association and peaceful assembly**

#### **4.2.1 Freedom of expression and opinion and freedom of press**

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<sup>15</sup> Concluding Observations of the Human Rights Committee, 12 December 2007, CCPR/C/DZA/CO/3, para. 7.

<sup>16</sup> Concluding Observations of Committee against Torture, 26 May 2008, CAT/C/DZA/CO/3, para. 11.

<sup>17</sup> *Ibidem*.

<sup>18</sup> *Ibidem*, referring to: Committee against Torture, *General Comment No 2 (2007)*, 24 January 2008, CAT/C/GC/2, para. 5.

<sup>19</sup> Presidential decree 92-44 of 1992 declaring the state of emergency.

<sup>20</sup> Recommendation 129.18 (Canada)

29. Although Article 48 of the new Constitution enshrines the right to freedom of expression, the lack of reform of law No 12-05 on information cannot properly protect those rights, as the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (SR FreedEx) noted during his visit in Algeria in April 2011<sup>21</sup>.

30. After the 2014 presidential election, several peaceful protest movements were violently suppressed by the authorities, who arrested many people, including journalists critical of the government. Additionally, several media sources were censored - such as the TV channel Al-Atlas, which covered the protests and aired programmes criticising Bouteflika's repeated candidatures for elections. The channel was suspended and its premises closed down on 12 March 2014, without legitimate ground or legal procedure<sup>22</sup>.

31. Alkarama remains worried that Article 144 *bis* of the Criminal Code imposes a heavy fine on every person who causes offence to the President, including any "offensive, insulting or defamatory expression, through writings, drawings or discourse"<sup>23</sup>. This provision is used to repress any kind of peaceful criticism towards the authorities.

32. Hassan Bouras, a leading member of the Algerian League for the Defence of Human Rights (ALDHR) - known for criticizing the Government on social networks and for denouncing corruption, has been subject to reprisals on many occasions. For instance, he was prosecuted for "insulting a constituent body"<sup>24</sup>.

#### **4.2.2 Freedom of association and right to peaceful assembly**

33. Law No 12-06 strengthens the control of the executive power on the establishment of associations and imposes many limitations. In particular, the executive holds discretionary power to refuse to register an association under the pretext that it does not comply with "national values, public order, public decency and the provisions of existing legislation". Following the passing of this law, two thirds of 93.000 associations officially registered at the end of 2011 by the Ministry of Interior would have disappeared or would not have had their agreement renewed in 2015<sup>25</sup>.

34. Article 98 of the Criminal Code incriminates "unarmed gatherings". Despite the state of emergency lifted in 2011, the right to freedom of association and assembly was not respected in the capital. In accordance with a 2011 decree, public assembly remains prohibited in the *wilaya* of Algiers and gatherings continue to be violently suppressed, including protests of the mothers of disappeared. In April 2014, the authorities forcibly dispersed public demonstrations and arrested demonstrators who protested against Bouteflika's re-election.

#### **4.2.3 Consequences of the 2006 Charter on freedom of expression, association and peaceful assembly**

35. Article 46 of the 2006 Charter states: « anyone who, by speech, writing or any other act, uses or exploits the wounds of the National Tragedy to harm institutions of the Democratic and Popular Republic of Algeria, to weaken the state, or to undermine the good reputation of its agents who honourably served it, or to tarnish the image of Algeria internationally, shall be punished by three to five years in prison" and a heavy fine.

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<sup>21</sup> *Report of the Special Rapporteur for Freedom of Expression and Opinion after its mission in Algeria* (10-17 April 2011), 12 June 2012, A/HRC/20/17/Add.1.

<sup>22</sup> Alkarama, *Algérie : Fermeture arbitraire et perquisition de la chaîne de TV Al Atlas*, 13 mars 2014, <http://fr.alkarama.org/component/k2/item/1362-algerie-fermeture-arbitraire-et-perquisition-de-la-chaîne-de-tv-al-atlas?Itemid=> (accessed 7 September 2016).

<sup>23</sup> Art. 144 bis. (Modified): "Anyone causing an offence to the President through offensive, insulting or defamatory expression, through writings, drawings or discourse, or any other spoken or pictorial means, or in any other electronic, data processing or informational media, shall pay a fine of one hundred thousand (100,000) to five hundred thousand (500,000) DA."

<sup>24</sup> Alkarama, *Algeria: Journalist and Board Member of the Algerian League for the Defence of Human Rights on Hunger Strike to Protest Arbitrary Detention*, 6 October 2015, <http://en.alkarama.org/algeria/press-releases/1909-algeria-arrest-of-hassan-bouras-the-repression-of-human-rights-defenders-continues> (accessed 20 September 2016).

<sup>25</sup> Djamel Benramdane, *Les associations algériennes des acteurs émergents en quête de reconnaissance*, juin 2015, p. 36.

36. This provision violates Algeria's international obligations under Article 19 of ICCPR and is used to silence any call for truth and justice from victims of serious violations committed during the war or their families.

37. **Recommendations :**

- a) Implement all recommendations made by SR FreedEx following his visit in Algeria ;
- b) Repeal all legal provisions that violate freedom of expression, association and assembly, including in Algiers ;
- c) Put an end to judicial harassment of human rights defenders and journalists;
- d) Repeal Article 46 of the 2006 Charter.

## **5. Human rights and the fight against terrorism**

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38. Article 87 *bis* of the Criminal Code modified by Law No 14-01 of February 4, 2014 does not define acts of terrorism in a clear, precise and foreseeable manner and incriminates acts which are nothing other than the exercise of freedom of expression, opinion and peaceful assembly<sup>26</sup>.

39. Through the crime of "glorification of terrorism"<sup>27</sup>, this article incriminates non-violent criticism towards the authorities. In July 2012, Saber Saidi was arrested and charged under this article for uploading videos related to the Arab spring<sup>28</sup>. In November 2015, young human rights activist Tijani Ben Derrah and Adel Al Ayachi were prosecuted for participating in a peaceful protest calling for freedom of expression and the release of other detained activists<sup>29</sup>.

40. In matters of terrorism, access to a lawyer is only guaranteed after half the maximum duration has expired (6 days<sup>30</sup>). In practice, these poor procedural safeguards are never complied with.

41. The Special Rapporteur on the promotion and protection of human rights while countering terrorism (SRCT), although concerned with the situation in Algeria, has yet to receive a reply - despite his reminders in 2010, 2012 and 2013.

42. **Recommendations :**

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<sup>26</sup> Art. 87 *bis* : Shall be considered a terrorist or subversive act any act targeting state security and national unity, territorial integrity, and the stability and normal functioning of institutions by any action whose objective is to

- Spread terror among the population and create a climate of insecurity through moral or physical assault on people, through exposing their lives, freedom, or security to danger, or through damaging their properties;
- Obstruct traffic or freedom of movement on the roads and gather or sit in in public spaces;
- Assault the symbols of the Nation and the Republic and unearth or desecrate graves;
- Assault the means of transportation and transport, the public and private properties, and possess or occupy them without legal justification;
- Assault the environment or introduce into the atmosphere, into the earth or on its face, or into the waters, including territorial waters, a substance that would expose the health of humans or of animals, or the natural environment to danger;
- Obstruct the work of public authorities, the freedom of worship, the exercise of public liberties, or the functioning of the establishments assisting public services;
- Obstruct the functioning of public institutions, assault the lives or properties of their representatives, or impede the implementation of laws and regulation

<sup>27</sup> Art. 87 *bis* 4: "Anyone who justifies, encourages or finances the acts covered by this section by any means shall be subject to 5 to 10 years imprisonment and a fine of DA 100,000 to DA 500,000".

<sup>28</sup> Alkarama, *Algérie : Saber Saidi est libre!*, 10 avril 2013, <http://fr.alkarama.org/yemen/item/1234-algerie-saber-saidi-est-libre> (accessed 7 June 2016).

<sup>29</sup> Alkarama, *Algeria : Two Human Rights Activists Arbitrarily Detained*, 9 February 2016 <http://en.alkarama.org/algeria/press-releases/2043-algeria-two-human-rights-activists-arbitrarily-detained> (accessed 7 September 2016).

<sup>30</sup> Art. 51 *bis* 1, para 3 : "However, when the ongoing investigation concerns drug trafficking, transnational organised crime, electronic data processing violations, money laundering, terrorism, current offences or corruption, the person held in custody is entitled to visits from their lawyer after half the maximum period set in Article 51 of the present law has expired".

- a) Define terrorism in a clear, precise and foreseeable manner, in compliance with international standards<sup>31</sup> and bring all domestic laws in line with Algeria's international obligations;
- b) Accept the pending visit request of the SRCT.

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<sup>31</sup> *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, 22 December 2010, A/HJRC/16/51, paras. 26-28.