



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Comments by the Government of ALGERIA\* on the conclusions  
and recommendations of the Committee against Torture**

[20 May 2008]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

1. The Algerian Government has examined the observations of the Committee against Torture published on 15 May 2008 following the consideration of Algeria's third periodic report on 2 and 5 May 2008.
2. In the Algerian Government's view, the observations set out in document CAT/C/DZA/CO/3 do not accurately reflect the content of the discussions held with the Algerian delegation.
3. As evidence of its commitment to the promotion of meaningful dialogue with the Committee against Torture, the Algerian Government wishes to point out that it provided the Committee with the relevant clarifications to questions raised by members of the Committee during the interactive discussions with the delegation, both in the written replies submitted prior to the session and during the two meetings at which the report was considered. It also expressed its readiness to transmit in writing any additional responses or information that might be requested by the Committee.
4. It therefore had every right to expect to see its stated positions reflected in the Committee's conclusions alongside the allegations that the Committee saw fit to make.
5. In this light, the Algerian Government would like to make the following comments and clarifications concerning the Committee's concluding observations.

#### **I. CHARTER FOR PEACE AND NATIONAL RECONCILIATION**

6. The Charter for Peace and National Reconciliation is a political document, and its purpose of restoring peace and security is in keeping with the purposes of the Charter of the United Nations. Consequently, it cannot be challenged by a legal body. The laws mentioned, namely, order No. 06-01 and the implementing decrees, are based on the Charter. They set out to provide a legal response to situations that were not covered by the domestic legal system. They were enacted after all the avenues and resources for dealing with the consequences of the national tragedy under existing Algerian legislation had been exhausted.
7. Neither order No. 06-01 nor the implementing legislation for the Charter for Peace and National Reconciliation favour impunity or amnesty, as the Committee's concluding observations seem to suggest (para. 11). They express the will of the Algerian people, in whom sovereignty is fully vested and on whose behalf justice is done, to overcome once and for all the serious crisis that has affected Algeria for a decade.
8. The laws constitute a transitional justice mechanism that deals with a number of situations on the ground and, as is mentioned in the Charter, it is for the President of the Republic to take additional and complementary measures, whenever necessary, to consolidate this process.
9. The delegation pointed out that the freely expressed will of the Algerian people was immutable and non-negotiable. The Committee's assessments of this document which is as a benchmark for the Algerian nation, in no way diminish the nation's determination to seek the most practical, appropriate and effective way possible to resolve this rather complex and critical situation.

## **II. STATE OF EMERGENCY**

10. The delegation informed the Committee that the state of emergency had been imposed to uphold the rule of law under exceptional circumstances. It highlighted the constitutional grounds for taking that measure for the protection of persons and property and stressed that the Secretary-General of the United Nations had been informed of it at the time.

11. The delegation listed the measures taken under the state of emergency, which were subsequently repealed. The delegation recalled, among other things, the dissolution of the special courts, the closing of the prison camps and the lifting of the curfew. It pointed out that the only remaining measure in force was one whereby the Ministry of Internal Affairs could call out army units on a case-by-case basis, as necessary, for public order and security operations.

12. The delegation also provided information on the process of institutional normalization, citing: the number of elections, public meetings and demonstrations and national and international conferences; the reopening of foreign embassies that had been temporarily closed and the opening of new diplomatic missions; the return of airline companies and investment flows; the revised country risk assessments of Algeria by insurance and reinsurance companies; and many other activities.

13. The delegation emphasized, however, that the terrorist threat was still present, citing the twin attacks of 11 December 2007, which had targeted the Constitutional Council and the United Nations offices in Algeria, as perfect illustrations of the threat. It concluded that the state of emergency would be maintained pending an end to the situation that prevailed when it was declared.

## **III. "SECRET PLACES OF DETENTION"**

14. The Algerian delegation categorically refuted the allegations with regard to alleged places of detention that reportedly lie outside the reach of the law. In all the time that they have been promoting subversion and attacking republican institutions, the people making such allegations have never been able to put forward any documentary evidence.

15. The Algerian Government wishes to reaffirm that it exercises its authority over all places of detention under its jurisdiction and that it has been granting permission for visits by independent national and international institutions for more than eight years. It also wishes to clear up the confusion about the administrative custody centres established in February 1992 on the basis of an order of the Ministry of Internal Affairs and definitively closed in November 1996 and about the alleged secret detention centres mentioned in paragraph 6 of the Committee's concluding observations, which exist only in the imagination of the persons making the allegations.

## **IV. THE ISSUE OF DISAPPEARANCES**

16. As was made clear during the discussion with the Committee, the Government wishes to emphasize that the issue of disappearances should be put in the proper context, namely as an outcome of terrorist crime.

17. The Government is anxious to address this painful issue, which is a consequence of the national tragedy, and recalls that the principle of compensation has been upheld and extended to all victims without distinction.

18. The Government informed the Committee that the publication of the report of the ad hoc commission on disappearances fell under the exclusive jurisdiction of the authority that had prepared it and that many of the recommendations contained in the report were incorporated into the implementing legislation for the Charter for Peace and National Reconciliation.

19. With regard to disclosure of the identity of missing persons, the Algerian delegation pointed out during the discussion that the decision was a private matter for each of the families concerned. The delegation stated that publishing the names of missing persons was tantamount to an additional penalty under Algerian law and would not contribute to the climate of peace, harmony and reconciliation chosen by the Algerian people to overcome the crisis.

## **V. TORTURE AND POLICE CUSTODY**

20. The Algerian Government described the legislation in place on torture both in its report (CAT/C/DZA/3) and during the discussion with the Committee. It informed the Committee of the definition set forth in the Criminal Code, which is taken from article 2 of the Convention. The Government stated that torture was prohibited in all places and in all circumstances and that the perpetrators of ill-treatment faced criminal prosecution.

21. The Government outlined the constitutional norms on police custody, the strict procedures for extending the period of custody under the supervision of the judicial authorities and the penalties incurred by any State officials who do not comply with those norms.

22. The Algerian Government clarified the provision on the use and supervision of police custody procedures under article 51 of the Code of Criminal Procedure. The Government recalled that by law the duration of police custody may not exceed 48 hours. The delegation stated that custody may be extended for a further 48 hours with the written authorization of the local State prosecutor.

23. As regards terrorist crimes and transnational organized crimes such as drug trafficking, counterfeiting, money-laundering and human trafficking, the maximum period of police custody is 12 days. This period is based on practical considerations that are related to the sheer size of the national territory, the complexity of the investigations and the nature of the networks involved, including their international dimensions.

## **VI. DEFINITION OF TERRORISM**

24. In its replies to the requests for clarifications made by the Committee during the interactive discussion on 5 May 2008, the delegation recalled that like many countries Algeria was ill-equipped to confront terrorist crime.

25. The delegation indicated that the definition of the crime of terrorism set out in article 87 bis of the Criminal Code must be applied in combination with another article that

defines the act or acts committed in the context specified in the first-mentioned article. This contextualization allows the judge to assess the seriousness of the offences with which the accused has been charged and to take the appropriate legal measures.

26. At no time has this provision been used, as the Committee would have it, to restrict the enjoyment of civil rights under the Constitution or been interpreted by a judge as a way to institute proceedings.

27. Algeria recalls that it has been calling for an international conference on terrorism for more than a decade. Algeria regrets that to date the international community has not managed to reach consensus on a definition of terrorism that distinguishes between the legitimate right to struggle against foreign and colonial occupation and the crime of terrorism.

## **VII. CONFESSIONS MADE IN CUSTODY**

28. In its periodic report and in reply to the question in paragraph 33 of the list of issues (CAT/C/DZA/Q/3), the Algerian Government pointed out that, in accordance with article 215 of the Code of Criminal Procedure, all statements and reports drawn up by the criminal investigation department concerning crimes or lesser offences merely serve as sources of information and do not constitute evidence under Algerian law.

29. Returning to this point during the interactive discussion on 5 May 2008, the Algerian delegation pointed out that any confession, even one made spontaneously to a police officer, may be retracted in the presence of the public prosecutor or investigating judge, who moreover wields extensive powers that make it possible to restart the investigation from the beginning.

30. Concerning the merits of the case, the delegation stated that the investigating judge may base his or her decision only on the evidence presented to him or her while hearing the arguments and counter-arguments. Even a confession made before a court does not constitute irrefutable evidence, as the evaluation of confessions is a matter for the courts under article 213 of the Code of Criminal Procedure.

## **VIII. PUNISHMENT OF MINORS AND YOUNG PERSONS IN DETENTION**

31. The delegation informed the Committee, in its oral reply of 5 May 2008, that article 21 of the Educational Policy Act of 23 January 2008 increased the scope of the prohibition against corporal punishment in schools.

32. The delegation also stated that under article 206-1 of the Health Protection and Promotion Act of 16 February 1985 all health practitioners must report any cases of maltreatment of minors or persons deprived of their liberty which have come to their attention during the course of their work.

33. The strategy on violence against children was also explained in detail to the members of the Committee, a strategy that gives equal focus to the prevention of violence, the intervention of the relevant actors, the protection of children and the social rehabilitation of victims. The delegation informed the Committee that social workers were also required to report suspected cases of violence in schools or families. Lastly, the delegation said that the framework legislation on childhood made this reporting mandatory on pain of prosecution.

34. The Algerian delegation informed the Committee about how the prison system in Algeria was organized. It made clear that women and minors were detained in separate quarters from other categories of offenders. The delegation pointed out that when juveniles were involved in a criminal case, including a terrorism case, they retained their right to raise a defence based on their status as minors and in no case could a death penalty be handed down to them, much less carried out. Lastly, the delegation confirmed that the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) were observed in Algeria.

## **IX. VIOLENCE AGAINST WOMEN AND ACTS OF MOB VIOLENCE**

35. The delegation informed the Committee of the measures taken by the Government to prevent these kinds of violence. The following advances are worth noting in particular: the development of a policy for the protection and care of victims; gender mainstreaming in all sectors; the removal of obstacles to the social and economic integration of women; and the establishment of facilities and mechanisms to assist women in difficulty.

36. The delegation informed the Committee that as part of efforts to support the national strategy on violence against women, a survey on the prevalence of such violence had been conducted in 2006 and had led to the establishment of an anti-violence commission and more robust enforcement mechanisms.

37. Sexual harassment is henceforth an offence (article 231 bis) and the principle of imposing stiffer penalties for the offence of raping a pregnant woman is upheld in the Criminal Code. Lastly, there is an ongoing debate over DNA testing to establish paternity.

38. With regard to acts of mob violence, in particular the incidents in Ouargla, the delegation provided members of the Committee with a full explanation of the background to the incidents and the procedures followed to identify, prosecute and punish the perpetrators of the acts.

39. The delegation indicated that it would have liked to have more information on the events that reportedly took place in Tébessa so that it could provide answers on the subject, and drew the Committee's attention to the Algerian Government's response to the report of Yakin Ertürk following her visit to Algeria in January 2007 and to its statement during the consideration of this item by the Human Rights Council at its seventh session in March 2008.

## **X. TRAINING OF LAW ENFORCEMENT OFFICERS**

40. The representatives of the National Gendarmerie and the National Security Service on the delegation, informed the Committee at the meeting of 5 May 2008 about how the two institutions fulfil their obligations to training officers responsible for enforcing human rights laws.

41. The basic training of any official includes a module on civil liberties, in which human rights instruments are prominently featured.

42. Moreover, given that law enforcement officers have the status of criminal investigators, their training places great emphasis on respect for civil rights and the penalties that these officials face for violating the rules concerned.

43. Lastly, before the meeting to consider the report, the Government transmitted a series of human rights documents for law enforcement officers which had been produced in conjunction with the Office of the United Nations High Commissioner for Human Rights.

#### **XI. NATIONAL ADVISORY COMMISSION FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS**

44. The Algerian delegation is astonished that the Committee has called into question the independence of the National Advisory Commission for the Promotion and Protection of Human Rights, citing the fact that its members were appointed by a presidential decree (para. 8). This practice is widespread throughout the world. However, in certain countries the national human rights institution granted accreditation status A under the system of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights reports directly to the Office of the Prime Minister rather than the Office of the President, who is the guarantor of the Constitution, fundamental individual rights and civil liberties.

45. The procedure of nomination by decree does not contradict the Paris Principles in that it is stated clearly in the second section of the text of the Paris Principles that the “composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights”.

46. In the present case, article 8 of presidential decree No. 01-07 of 25 March 2001 establishing the National Advisory Commission for the Promotion and Protection of Human Rights stipulates that the “composition of the Commission and the appointment of its members shall be based on the principle of social and institutional pluralism”.

47. Furthermore, in paragraph 3 of the aforementioned section of the Paris Principles it is stated that: “In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution’s membership is ensured.”

48. In the present case, the above-mentioned article 8 states that “members of the Commission are appointed by the President on the proposal of national human rights institutions and civil society organizations”.

49. In making this clarification the Algerian Government affirms that it remains committed to the unflagging spirit of cooperation that it has always shown the Committee. It regrets, however, that the concluding observations of the Committee do not take into account the additional oral replies and clarifications that the delegation provided during the discussion that took place with the Committee at the meetings on 2 and 5 May 2008, and which sought to help the Committee to assess the accomplishments made in promoting and protecting human rights in general and preventing torture and other cruel, inhuman or degrading treatment in particular.