

ALGERIA

CAT A/46/46 (1991)

263. The Committee considered the initial report of Algeria (CAT/C/9/Add.5) at its 79th and 80th meetings, held on 25 April 1991 (CAT/C/SR.79 and 80).

264. The report was introduced by the representative of the State party, who referred to the ongoing process of legal reform in his country. In this context, he drew the attention of members of the Committee to the adoption of a law in March 1990 clearing the path for the establishment of a multi-party system in Algeria.

265. The members of the Committee commended the Government of Algeria for the quality of its report and expressed their appreciation for the democratic nature of the process of legal reform. With regard to the form of the report, it was noted that the first part contained perhaps too much information of a general nature, which was of little direct relevance to the implementation of the Convention. Members of the Committee wished to receive additional information on the revisions made in the organization of the judiciary, with emphasis on training, conditions for nomination and dismissal, disciplinary provisions and the political rights of judges. They also wished to know how the provisions for the protection of judges against all forms of pressure were put into practice; whether the judge's obligation to conciliate between parties in a litigation pertaining to administrative law might not lead to an arbitrary result in the case of an individual opposing public authorities; and whether reparation could be obtained for judicial errors. Information was sought also on the establishment, membership and powers of the National Committee against Torture and the Constitutional Council.

266. Noting that international treaties were accorded precedence over domestic law, members of the Committee asked whether any specific laws had been adopted implementing the Convention. They also wished to be provided with information of a general nature on the laws and measures governing prison administration and on the role of the armed forces in the maintenance of order. Additional information was requested with regard to the competence of tribunals during the state of exception and the validity of their earlier rulings and on the application of the death penalty in Algeria. Members of the Committee also asked what the scope was of the amnesty mentioned in paragraph 7 (1) of the report and whether the victims of the crimes involved had been compensated.

267. With regard to article 1 of the Convention, members of the Committee asked whether the definition of torture in article 1 of the Convention applied in Algeria by virtue of the integration of the Convention in domestic legislation.

268. With regard to article 2 of the Convention, members of the Committee wished to know what measures have been taken to prevent torture, especially with regard to rules of interrogation of detainees and possibilities for complaint in cases of ill-treatment. They also wished to know whether any amendments were envisaged with regard to legislation on the state of emergency; under what circumstances a state of emergency could be proclaimed and whether a state of emergency would suspend the rights of a detainee to communicate with a lawyer and to have access to medical care; and whether the ban on torture could be lifted in such circumstances. Finally, it was asked

whether positive Algerian law provided that an order from a superior officer or a public authority might not be invoked as a justification of torture.

269. Noting that the report referred to articles of the Convention relating to the Status of Refugees, members of the Committee remarked that article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was of a broader nature and queried whether Algerian legislation on refoulement and extradition was in conformity with the latter Convention. It was asked in particular whether aliens benefited from additional guarantees with regard to expulsion. With reference to information from Amnesty International concerning Moroccan soldiers who had fled to Algeria and were subsequently returned to their country, it was asked whether their expressed fears of being tortured upon return in their country had been taken into account by the Algerian authorities.

270. With reference to article 4 of the Convention, members of the Committee asked how the crime of torture as defined in the Convention was punished and whether non-physical violence was also covered by the law. They wished to receive information on the number of cases of torture and to be provided with some examples of jurisprudence in such cases. Furthermore, they asked whether those guilty of inflicting death by negligence were subject to capital punishment.

271. With regard to article 5 of the Convention, members of the Committee asked what the position would be of a person known to have committed torture on an Algerian citizen outside Algerian territory.

272. Turning to articles 6, 7 and 8 of the Convention, members of the Committee asked to be provided with information on rules governing the procedure in cases of apprehension in flagrante. They wished to know whether extradition procedures provided for custody as envisaged in article 6 of the Convention; how article 7 of the Convention was implemented in Algerian legislation; whether extradition was subject to the existence of a treaty; and whether political considerations were taken into account in extraditing persons accused of torture.

273. With regard to article 10 of the Convention, members of the Committee sought information with regard to the training of legal, medical and prison staff.

274. With reference to article 11 of the Convention, members of the Committee asked what were the maximum periods of preventive, pre-trial and secret detention and which authorities ruled on their prolongation; whether detainees had access to their lawyer at all times; how prison establishments were supervised by the judicial authorities; and whether prison guards were armed and what their instructions were in cases of mutiny or mass escape.

275. With regard to article 12 of the Convention, members of the Committee asked whether there had been any investigations into cases of torture. It was also asked what had been the number and nature of brutalities that had occurred in the affair at the Blida prison. Members of the Committee wished to be informed of the judicial aftermath of this affair and inquired whether similar problems had also occurred elsewhere.

276. With reference to article 14 of the Convention, members of the Committee asked whether a

victim of torture inflicted upon him by an agent of the State could obtain compensation by invoking the criminal responsibility of the agent before a criminal tribunal or by invoking the responsibility of the State before an administrative tribunal and whether the same procedures would apply to aliens. Members of the Committee also inquired whether there had been any requests for compensation by torture victims and, if so, in what form the compensation had been awarded, what forms of rehabilitation were applied, and whether there were any rehabilitation centres in Algeria.

277. In connection with article 15 of the Convention, members of the Committee wished to know whether there had been any cases in which statements obtained through the application of coercion had been rejected by tribunals and whether such rejection was automatically applied, as provided by the Convention, even in the absence of precise provisions to that effect in Algerian legislation.

278. In reply to comments made by the members of the Committee, the representative of Algeria said that the exhaustive nature of the first part of the report could be explained by the fact that his Government's competent authorities had endeavoured to highlight the politico-legal context in which Algeria had been evolving since its independence.

279. With regard to questions raised concerning the Constitutional Council, he explained that the Council was composed of seven members under the presidency of a former Minister of Justice and was responsible for guaranteeing compliance with the Constitution. Turning to the organization of the judiciary, he said that a number of measures had been taken to strengthen its independence. Judges were required to obey only the law and anyone who attempted to influence or threaten them was punishable under civil law. The new statutes of the Supreme Council of Justice excluded representatives from the Ministry of Justice from participating in disciplinary sessions so that magistrates would be judged by their peers only. The provision prohibiting judges from joining political associations was also aimed at strengthening the independence of the Judiciary. However, judges were permitted to join trade unions. Lawyers were no longer considered as officers of the court but as agents contributing to the protection of individual freedoms. The procedure for appeal against acts by the authorities had also been improved by increasing the number of chambers and magistrates. There were 31 courts of appeal and a Supreme Court as well as military courts. The latter were competent only to deal with offences committed by military personnel in military areas.

280. With reference to the organization of the investigative authorities, the representative explained that, while the police was under the Ministry of the Interior and the gendarmerie under the Ministry of Defence, both the police and the gendarmerie as judicial police officers were subject to the supervision of the Chief Prosecutor, who monitored the activities of the judicial police and, if necessary, challenged any official who acted in excess of his powers. The Amnesty Law passed in August 1990 covered all offences committed during the state of emergency between 1980 and 1988 and all people who had committed offences against the security of the State between 1980 and February 1989. With regard to the issue of capital punishment, the representative stated that since the 1960s the Supreme Court or the Court of Cassation had overturned all death sentences passed by the criminal courts for economic crimes. No execution on any other grounds had been carried out since 1980 but some 30 people were still under sentence of death, mostly for particularly abhorrent crimes.

281. Turning to individual articles of the Convention, the representative said that there was no

definition of torture in the Penal Code, but the definition in article 1 of the Convention had the force of law in Algeria.

282. With regard to article 2 of the Convention, the representative drew the attention of members of the Committee to a stipulation in the health law to the effect that physicians had to report to the Government Procurator or to the judicial Police any evidence of ill-treatment of minors or persons deprived of their liberty which they came across in the course of their duties. He stated that the President of the Republic, after consultation with relevant State organs, could declare a state of emergency but no such situation had arisen since the adoption of the new Algerian Constitution. There was no direct reference to torture in the regulations governing states of exception or siege. With regard to superior orders, the representative said that a superior officer who ordered a subordinate to commit an unlawful act might be liable to prosecution as an accomplice or as the instigator of the act, while the subordinate was prosecuted as author of the act.

283. With reference to article 4 of the Convention, the representative stated that the Penal Code did not lay down specific penalties for acts of torture but that agents of the State who infringed individual freedoms were subject to a prison sentence of five to ten years. Agents of the State found guilty of acts of torture would receive a prison sentence ranging from six months to three years.

284. In connection with article 6 of the Convention, the representative explained that the Algerian authorities would detain a person suspected of torture in another country on the request of the State concerned and that the Supreme Court would decide whether extradition should take place.

285. With regard to article 10 of the Convention, the representative said that a number of measures had been taken to improve education and training for legal and judicial personnel, including courses and seminars for judges and the judicial police. All officials participating in investigations had special training courses on their obligation to preserve individual freedoms. He also mentioned that three schools for prison officers had been opened. With regard to the training of physicians. The representative said that a council for medical ethics had been established and that physicians received instruction in the international human rights standards to which Algeria was a party.

286. Referring to article 11 of the Convention, the representative stated that the Constitution provided for police custody with a duration of 48 hours, during which time the detainee could communicate with his lawyer, be examined by a physician of his own choice, and at all times enter into direct contact with members of his family. The Government prosecutor could in certain instances extend this period. Each police station and gendarmerie brigade maintained a register of persons in police custody. The representative provided information on the different categories of detention establishment and added that all establishments had to be visited by magistrates, procurators and judges juges d'instruction.

287. With regard to article 12 of the Convention, the representative informed the Committee of the establishment of a human rights office under the Ministry of Justice which would investigate cases of human rights abuses in cooperation with non-governmental organizations. He said that there had been only one case of ill-treatment of detainees, which had occurred when more than 100 prisoners had escaped from a penal establishment and had been badly treated after their rearrest. A commission of inquiry had been set up and proceedings had been instituted against three wardens.

288. Turning to article 14 of the Convention, the representative explained that, according to the Code of Penal Procedure, either the Judicial police or a victim of an act of torture could initiate compensation proceedings. In some circumstances, the State bore the civil liability for acts committed by its agents and could claim the amount of compensation paid from the person who had committed the offence.

289. In his reply to questions concerning article 15 of the Convention, the representative said that a confession could not be accepted as sole proof of guilt but would be accepted or rejected in the light of other evidence available.

Concluding observations

290. Concluding their examination of the report, the members of the Committee said that the replies given by the representative had shed new light on the issues raised by the report, which had shown the efforts being made by the Algerian Government to modernize its legislation in the interest of greater democratization. It was noted that further improvement was needed in respect of the maximum duration of police custody and the issues of extradition and refoulement.

CAT A/52/44 (1997)

70. The Committee considered the second periodic report of Algeria (CAT/C/25/Add.8) at its 272nd and 273rd meetings, held on 18 November 1996 (see CAT/C/SR.272 and 273), and adopted the following conclusions and recommendations.

1. Introduction

71. The Committee welcomes the presentation of the second periodic report of Algeria and thanks the Algerian delegation for its oral introduction to that report.

72. The Committee also thanks the delegation for its willingness to engage in dialogue with the Committee and for the valuable information it provided on the situation in Algeria.

2. Positive aspects

73. The Committee notes with satisfaction Algeria's commitment to institutionalize the rule of law and promote the protection of human rights as evidenced, inter alia, by its ratification of the Convention (without reservation and with declarations under articles 21 and 22), the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.

74. The Committee also notes with satisfaction the adoption of new legislation: provisions making torture a crime and making searches subject to the consent of the householder and to a court warrant, limits on the duration of pre-trial detention, and the introduction of court supervision as an alternative to pre-trial detention.

75. It welcomes the establishment in March 1995 of the Office of Ombudsman and the closure of the administrative detention centres.

76. The Committee thanks the State party for its contribution to the United Nations Voluntary Fund for Victims of Torture. The Committee has learned with great satisfaction of the proposed amendment to the Constitution and the plans for setting up a council of State, creating a national human rights observatory and scheduling legislative and municipal elections over the period from March to June 1997.

3. Factors and difficulties impeding the application of the provisions of the Convention

77. The Committee is quite well aware that, in the current period of transition to democracy and in the light of the prevailing violence and its many forms, there are impediments to the effective implementation of all the provisions of the Convention.

4. Subjects of concern

78. The Committee is concerned that:

(a) Torture is not more fully defined, in conformity with article 1 of the Convention;

(b) Detention in custody can be extended to 12 days;

(c) Decree 92/44 of 9 February 1992 allows the Minister of the Interior or his nominee to order administrative placement in custody centres with no judicial supervision.

79. While welcoming the fact that the death penalty has not been enforced since 1993, the Committee is still concerned at reports from human rights organizations concerning extrajudicial executions, disappearances and a rising incidence of torture since 1991, after torture had virtually ceased between 1989 and 1991.

5. Recommendations

80. While it is aware of the difficulties posed by the existence of terrorist groups, the Committee reminds the State party that torture is not warranted in any exceptional circumstances. In that light, it recommends that:

(a) To avoid any ambiguity, the State party should arrange for the full text of the Convention to be published in the Official Gazette;

(b) The definition of torture should be revised to bring it into closer conformity with article 1 of the Convention;

(c) Consideration should be given to making the judiciary more independent and ensuring the effective exercise of its internationally recognized powers;

(d) Steps should be taken to ensure that only a judicial authority can take decisions restricting individual liberty;

(e) In accordance with its obligations under various conventions, particularly article 12 of the Convention, the State party should ensure that an objective inquiry is made promptly whenever there are reasonable grounds to believe that an act of torture has been committed in territory under its jurisdiction and that the results of such inquiries are published

(f) The Committee should be given information on all the individual cases raised during the presentation of the second report on the basis of allegations by human rights organizations.