



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

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

Concluding observations of the Committee against Torture

ALGERIA

1. The Committee considered the third periodic report of Algeria (CAT/C/DZA/3) at its 815th and 818th meetings, held on 2 and 5 May 2008 (CAT/C/SR.815 and 818), and adopted the following concluding observations at its 827th and 828th meetings, held on 13 May 2008 (CAT/C/SR.827 and 828).

A. Introduction

2. The Committee welcomes the third periodic report of Algeria, the written replies (CAT/C/DZA/Q/3/Add.1) to the list of issues (CAT/C/DZA/Q/3) and the additional information provided during the discussion of the report, while regretting the eight-year delay in its submission. The Committee also welcomes the resumption of constructive dialogue with the high-level delegation sent by the State party, and is grateful for the exhaustive replies to the questions raised.

B. Positive aspects

3. The Committee notes with satisfaction:

(a) The provisions included in the amendments to the Criminal Code, articles 263 bis, ter and quater, making torture a criminal offence;

- (b) The publication of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”) in the Official Gazette of the People’s Democratic Republic of Algeria, No. 11, of 26 February 1997;
- (c) The State party’s signing of the International Convention for the Protection of All Persons from Enforced Disappearance on 2 February 2007;
- (d) The moratorium on the death penalty in force in the State party since 1993;
- (e) The fact that the State party does not engage in the practice of seeking diplomatic assurances from a third State to which it plans to extradite, return or expel an individual;
- (f) The commitment to national reconciliation expressed by the State party, as well as its stated intention to continue to better promote and protect human rights.

C. Subjects of concern and recommendations

Definition of terrorism and state of emergency

4. The Committee expresses its concern about the rather vague definition of terrorism set out in article 87 bis of the Criminal Code, although it understands that the State party has gone to some lengths to protect its national security and its citizens from the threats posed by terrorist acts. The Committee is concerned that this definition could extend to acts which may be unrelated to terrorism and lay the persons thereby arrested open to actions which could violate the Convention. Furthermore, the Committee is also concerned that the state of emergency declared in 1992 has been extended, despite information provided by the State party itself showing significant improvement in the security situation. The extension of the state of emergency is reflected by the continuing delegation of judicial police functions to officials of the Intelligence and Security Department, who have reportedly been behind numerous cases of torture and cruel, inhuman and degrading treatment committed in the territory of the State party (art. 2).

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

Basic safeguards for detainees

5. While noting the amendments made to the Code of Criminal Procedure, the Committee remains concerned about reports that the maximum period of remand in custody (up to 12 days) can, in practice, be extended repeatedly. The Committee further notes with concern that the law

does not guarantee the right to counsel during the period of remand in custody, and that the right of a person in custody to have access to a doctor and to communicate with his or her family is not always respected (art. 2).

The State party should ensure that the maximum period of remand in custody is respected in practice and take the necessary steps so that the right of persons remanded in custody to have access to counsel as soon as they are arrested is guaranteed by the Code of Criminal Procedure and strictly enforced.

In addition, the State party should ensure that the right of any detainee to have access to a doctor and to communicate with his or her family, in accordance with article 51 of the Code of Criminal Procedure, is respected in practice. The State party should also establish a national register of prisoners, including persons detained in institutions run by the Intelligence and Security Department.

Lastly, insofar as the State party indicated that the judicial police, under the supervision of the prosecutor's office, has introduced a procedure for recording on video the interrogation of persons suspected of terrorism, it should also ensure that such recordings are made available to the defence attorneys.

Secret detention centres

6. The Committee takes note of the State party's assurances that Intelligence and Security Department officers are placed under the control of the Public Prosecutor's Office, and that secure detention centres no longer exist as of November 1996. The Committee nevertheless remains concerned about reports of the existence of secret detention centres run by the Department in its military barracks in Antar, in the Hydra district of Algiers, which are outside the control of the courts. The Committee is also concerned about the lack of information showing that the competent judicial authority has taken steps to look into these allegations (arts. 2 and 11).

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

Juvenile detainees

7. The Committee expresses its concern over the fact that minors aged 16 may be found criminally responsible and detained in the context of counter-terrorism efforts. The Committee is also concerned about information received that juvenile detainees are not separated from adults (arts. 2 and 11).

The State party should consider raising the minimum age of criminal responsibility in terrorism cases so that it is consistent with generally accepted international standards on the matter. The State party should also ensure that minors receive

age-appropriate treatment in accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. The State party should also guarantee that juvenile detainees are separated from adults.

Independence of the National Advisory Commission for the Promotion and Protection of Human Rights

8. While noting with satisfaction the establishment of the National Advisory Commission for the Promotion and Protection of Human Rights on 9 October 2001, the Committee remains concerned about the lack of available information on the work of the Commission. The Committee is also concerned that the members are appointed by Presidential decree and that, according to information provided by the Algerian delegation, the President decides whether to follow up on the recommendations of the Commission, including the publication of its report, which is an obstacle to the transparency needed for it to run smoothly and independently (art. 2).

The State party should ensure that the annual reports on the work of the National Advisory Commission for the Promotion and Protection of Human Rights are made public and widely distributed. The State party should strengthen the independence of the Commission in accordance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles) and enhance its role in monitoring national and international obligations undertaken by Algeria for the protection of human rights, including strict enforcement of the provisions of the Convention.

Non-refoulement and collective expulsion

9. The Committee is concerned about allegations received of collective expulsions of migrants in violation of their basic right to have their case reviewed individually and to appeal against the expulsion decision. The Committee is also concerned that some persons might be expelled to States where they risk being subjected to torture (art. 3).

The State party should fully implement the provisions of article 3 of the Convention and ensure that the persons under its jurisdiction have their cases duly considered by the competent authorities and receive fair treatment during all stages of the procedure, including the opportunity to request an effective, independent and impartial review of the relevant expulsion or removal decisions, and to exercise the right of appeal.

In this respect, the State party should ensure that before the authorities responsible for overseeing foreign nationals take a decision to expel a foreign national who has entered or is residing illegally in Algeria, they conduct a thorough review of the situation in all cases to ensure that the person concerned would not be subjected to torture or inhuman or degrading treatment in the country to which he or she could be sent.

Training of law enforcement personnel

10. While taking note of the information provided by the delegation of the State party concerning its efforts to provide human rights training for law enforcement personnel, the Committee nevertheless remains concerned at the many serious allegations which it has received of cases of torture and abuse inflicted on detainees by law enforcement officers, including officers of the Intelligence and Security Department (art. 10).

The State party should step up its efforts to provide education and training on the prohibition against torture, especially among Intelligence and Security Department officials, and establish evaluation and monitoring mechanisms to measure the results.

Impunity of members of armed groups and State officials

11. The Committee takes note of the fact that order No. 06-01 establishing the Charter for Peace and National Reconciliation provides for an amnesty for members of armed groups and State officials. The Committee notes that members of armed groups who have given themselves up to the authorities will not be prosecuted or will be given a reduced sentence as long as they have committed no mass killings, bomb attacks or rapes (chap. 2). The Committee reminds the State party that prosecution may not be waived under any circumstances for other international crimes such as torture or enforced disappearance. The Committee also notes, with respect to State officials, that article 45 of the order specifies that “no proceedings may be instituted individually or collectively against any of the components of the defence and security forces of the Republic for actions taken to protect persons and property, safeguard the nation and preserve the institutions of the Republic of Algeria”, without excepting international crimes such as torture or enforced disappearance. These provisions are not consistent with the obligation of every State party to conduct an impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction, to prosecute the perpetrators of such acts and to compensate the victims (arts. 12, 13 and 14).

The State party should amend order No. 06-01, article 45, chapter 2, to specify that waivers of prosecution do not apply under any circumstances to crimes such as torture, including rape, and enforced disappearance, which are crimes to which the statute of limitations does not apply. The State party should immediately take all necessary steps to guarantee that past or recent cases of torture, including cases of rape, and enforced disappearance, are investigated systematically and impartially, the perpetrators of such acts are prosecuted and punished in a manner commensurate with the gravity of the acts committed and the victims are adequately compensated. To that end, the Committee draws the attention of the State party to paragraph 5 of its general comment No. 2 (2007), in which it expressed the view that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability.

Missing persons

12. The Committee notes the acknowledgement by the State party of the enforced disappearance of thousands of persons in Algeria since the start of the 1990s. It also notes that the figures put forward by the Government concerning persons who have disappeared since the 1990s range from 4,000 to 7,000. The Committee expresses its concern that despite these facts the competent judicial authorities have not initiated proceedings to investigate the fate of missing persons and to identify, prosecute and punish the perpetrators of enforced disappearances. This constitutes a violation of articles 12, 13 and 14 of the Convention. The Committee is also concerned that the report of the ad hoc National Commission on Missing Persons has not been made public to date. The publication of these facts would enable anyone with information which could help to locate the missing persons to communicate it to the competent authorities (arts. 12, 13 and 14).

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

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

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. The Committee is concerned that the criteria established for compensating the families of missing persons have not been made public (art. 14).

The State party should abolish the rule obliging families to certify the death of the missing person in order to receive compensation. The Committee reminds the State party that the enforced or involuntary disappearance of persons may constitute inhuman treatment for the members of families of missing persons. The State party should also guarantee the right of such families to seek redress or be fairly and adequately compensated, including by giving them the necessary psychological, social and financial support so that they may make the fullest possible readjustment. The Committee hopes that the State party will communicate to it as soon as possible the criteria for compensating the families of missing persons.

Impartial investigation

14. While noting the explanations of the Algerian delegation concerning the death of Mounir Hammouche in police custody and the autopsy report which concluded that he committed suicide, the Committee remains concerned at information that the family of the deceased did not have access to the autopsy report. According to information received by the Committee, the family also noted that the body bore signs of a head wound and bruises on the hands and feet (art. 12).

The State party should launch prompt and impartial investigations spontaneously and systematically wherever there is reasonable ground to believe that an act of torture has been committed, including in the event of the death of a detainee. The State party should also ensure that the results of the investigation are communicated to the families of the victims.

Violence against women

15. The Committee expresses its concern at reports of several thousand cases of rape of women by members of the armed groups during the internal conflict in the State party. The Committee is also concerned about the lack of investigations, prosecutions and punishment of members of armed groups in rape cases and the lack of compensation and medical, psychological and social rehabilitation of the victims of such acts (arts. 12 and 14).

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

Acts of mob violence

16. The Committee is concerned about information received concerning many acts of mob violence against religious minorities and persons who are lawfully seeking alternative modes of expression and behaviour. The Committee is alarmed, among other things, about information concerning repeated acts of violence and collective rapes suffered by women, including single women, suspected of prostitution by their neighbours, particularly in Hassi Messaoud and Tebessa. The Committee is also concerned about the State party's inability to conduct an investigation to prosecute the perpetrators of such acts (arts. 12 and 16).

The State party should ensure that all necessary steps are taken to investigate cases of mob violence, particularly collective violence targeting religious minorities and people who are seeking alternative modes of expression and behaviour, in order to prosecute and punish the perpetrators of such acts of violence.

Right to an effective remedy

17. While noting the assurances given by the Algerian delegation that article 46 of order No. 06-01 implementing the Charter for Peace and National Reconciliation does not constitute an obstacle to exercise of the right to an effective remedy, the Committee nevertheless remains concerned that this provision specifies imprisonment for three to five years and a fine for anyone who undermines the institutions of the State party, insults the honour of its officials or sullies the image of the State party at the international level. The Committee is concerned that this provision could restrict the right of any person who claims to have been subjected to torture in the territory of the State party to file a complaint before the competent judicial authorities or to refer the matter to the Committee in accordance with article 22 of the Convention (art. 13).

The State party should amend article 46 of order No. 06-01 implementing the Charter for Peace and National Reconciliation in order to guarantee to any person who claims to have been subjected to torture the right to an effective remedy at both the national and international level, in accordance with article 13 of the Convention. The State party should also inform the public of its right to refer cases to the Committee under article 22 of the Convention.

Use of confessions in legal proceedings

18. While noting the Algerian delegation's assurances that confessions are used only for information purposes in legal proceedings, in accordance with article 215 of the Code of Criminal Procedure, the Committee remains concerned about the lack of a provision in the State party's legislation clearly specifying that any statement that is proved to have been obtained as a result of torture may not be cited as evidence in any proceedings, in accordance with article 15 of the Convention. In addition, the Committee is concerned that article 213 of the Code of Criminal Procedure specifies that, "as with any evidence, the evaluation of confessions is a matter for the judge", as well as information received that confessions obtained as a result of torture have been admitted in legal proceedings (art. 15).

The State party should amend its Code of Criminal Procedure to make it fully consistent with article 15 of the Convention. The State party should also provide the Committee with information on the number of cases where confessions made under torture, duress or threat have not been admitted as evidence.

Corporal punishment and violence within the family

19. While noting with satisfaction that corporal punishment against children is forbidden in school, the Committee remains concerned about the lack of any provision in the legislation of the State party prohibiting the use of this practice within the family. The Committee also notes with concern the lack of any provision in its domestic legislation prohibiting domestic violence against women (art. 16).

The State party should incorporate into its domestic legislation a provision prohibiting the use of corporal punishment against children within the family and domestic violence against women.

20. The Committee strongly encourages the State party to collaborate with the United Nations Human Rights Council special procedures and grant permission for a visit by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, while fully respecting the mandates of the fact-finding missions sent under the United Nations special procedures.

21. The Committee calls on the State party to ratify the principal United Nations human rights agreements to which it is not yet a party, including the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

22. The State party is invited to ratify the Optional Protocol to the Convention as soon as possible and to establish a national mechanism responsible for conducting periodic visits in all places of detention in order to prevent torture or any other cruel, inhuman or degrading treatment.

23. The State party is encouraged to ratify the Rome Statute of the International Criminal Court.

24. The State party is urged to widely disseminate the reports submitted by Algeria to the Committee, as well as the Committee's conclusions and recommendations, in the national languages through official websites, the media and non-governmental organizations. The State party is also encouraged to distribute its reports to national human rights non-governmental organizations before submitting them to the Committee.

25. The Committee invites the State party to submit its core document in accordance with the requirements concerning the common core document set out in the harmonized reporting guidelines adopted by international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

26. The Committee requests the State party to provide it, within a year, with information on action it has taken to follow up the recommendations of the Committee included in paragraphs 4, 6, 12 and 15 above.

27. The State party should submit its fourth periodic report to the Committee no later than 20 June 2012.
