



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

**Replies of the Government of the Algerian Republic to the list of issues
(CCPR/C/DZA/Q/3) to be taken up in connection with the consideration
of the third periodic report of ALGERIA (CCPR/C/DZA/3)***

[3 October 2007]

* 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.

Reply 1

Several court judgements and rulings based on article 11 of the Covenant have been handed down. The Algerian courts regard recourse to deprivation of liberty in connection with “commercial matters and loans”, as provided for under article 407 of the Code of Civil Procedure, as being incompatible with article 11 of the Covenant of 1966.

These decisions are confirmed in the constant jurisprudence of the Supreme Court, which takes the expression “contractual obligation” in article 11 of the Covenant to mean obligations arising from both civil and commercial contracts.

In Algeria, there is no court with exclusive competence for verifying the compatibility of national laws with the Covenant. Parties at law can seize all courts at all levels of such questions.

Reply 2

In keeping with the Paris Principles, the National Advisory Commission for the Promotion and Protection of Human Rights was established on 25 March 2001 by presidential decree.

It is an equal opportunities body comprising 45 members, 16 of whom are women. The representatives of member institutions do not have voting rights.

In conformity with the Commission’s statutes, the reports of the Commission are addressed to the President of the Republic who, in his capacity as the guarantor of public freedoms, assures appropriate follow-up to the recommendations contained therein.

The Commission’s national plan of action on human rights has inspired some of the work of the Commission on Judicial Reform, while the measures taken by the Government and approved by the Parliament give effect to the plan.

Reply 3

The Charter for Peace and National Reconciliation is a democratic response and the manifestation of a public desire to bring a definitive close to the grave crisis that almost destroyed the nation State and national unity. It cannot be reduced to a series of deadlines or statistics.

1. Over 7,000 persons benefited from pardons and the discontinuation of criminal proceedings (termination of a public prosecution) in the light of the implementation of the Charter for Peace and National Reconciliation.
2. Article 45 does not apply to acts committed after Ordinance No. 06-01 entered into force.
3. With the exception of persons involved in terrorist or subversive activities abroad (acts covered and punished by article 87 bis 6, paragraph 1, of the Criminal Code), all persons prosecuted or convicted under the articles cited in article 2 of Ordinance No. 06-01 (offences classified as terrorist and subversive acts), depending on their criminal status, benefit from the

termination of public proceedings (in the case of defendants) or a pardon (in the case of convicted persons) or else from the commutation or remission of their sentence, in the case of persons convicted of rape, bombings or massacres.

4. Members of “legitimate defence groups” who were prosecuted or convicted for acts of violence carried out in pursuance of their mission **did not benefit** from the Charter, since the offences with which they had been charged (ordinary offences) do not fall within the scope of Ordinance No. 06-01.

Reply 4

Algeria has ratified the Optional Protocol to the International Covenant on Civil and Political Rights. Every time that it has been informed of a communication, the Algerian Government has cooperated with the Committee in good faith and supplied additional replies, clarifications and comments.

As for the Views of the Committee, the executive cannot interfere with, or modify, final court judgements. The Committee’s Views are communicated to the judicial authority for the purposes of information, however.

The Algerian people, the exclusive holder of national sovereignty, decided in a referendum held on 29 September 2005 to amend the legal corpus of the Algerian Republic and that to which it subscribed. Expressing its views clearly and unequivocally, the Algerian people determined that this charter must be upheld by all Algerian citizens everywhere. Failure to comply with it constitutes a violation of the people’s sovereign right and lays the perpetrator open to the proceedings envisaged in national law.

Since the measures prescribed in Ordinance No. 06-01 are applied in the domestic sphere they can have no effect on the right to submit individual communications under the Optional Protocol.

Reply 5

The number of women elected to different assemblies:

- The National People’s Assembly (mandate 2007-2012): 30;
- The provincial (*wilaya*) people’s assemblies (mandate 2002-2007): 119;
- The municipal people’s assemblies (mandate 2002-2007): 145.

There are two women leaders of political parties. The parties in question are the Workers’ Party and the Movement for Youth and Democracy.

With regard to decision-making positions in local government, attention is drawn to the following data:

- Governor (*wali*): 1;
- General Secretary of a province (*wilaya*): 2;
- Inspector for a province (*wilaya*): 3;
- Director of regulatory affairs: 2;
- District (*daira*) chief: 11.

Reply 6

1. There are no criminal provisions that apply specifically to the perpetrators of violence against women. A programme of action is being implemented with United Nations agencies to deal with this issue more effectively.
2. Marital rape is not defined as a separate offence in the Algerian Criminal Code. The courts and case law consider any act of sexual penetration involving physical or psychological violence against a woman as constituting the offence of rape. This definition, based on the jurisprudence, does not rule out cases where a man forces his wife to have sexual relations with him.
3. As for the number of cases of violence against women in which the perpetrator was brought to justice, the statistics for 2005 and 2006 are reproduced in the numerical data contained in the annex to the present note.
4. In addition to the provisions of the Criminal Code that deal with the suppression of terrorism (art. 87 bis et seq.), the measures taken in the framework of Act No. 99-08 of 3 July 1999, concerning the Civil Concord and the Charter for Peace and National Reconciliation, were designed, inter alia, to prevent terrorist acts by enabling terrorists to repent and renounce their activities, by providing these persons with assistance (financial aid and vocational rehabilitation) and by compensating the victims of violence.

Reply 7

1. Article 11 of the Family Code, as amended, stipulates that a woman must marry in the presence of her legal guardian (*wali*), i.e. her father, a close relative or any other person of her choosing. This is a mere formality which has no implications as far as the woman's consent to the marriage is concerned. A woman can now choose the person that she wishes be present when she marries (her father, a close relative or any other person). Article 11, as amended, simply mentions the presence of the *wali*, whereas the previous article stipulated that the conclusion of a woman's marriage was a matter for her *wali*, who had to be either her father or a close relative.
2. A Muslim women cannot marry a non-Muslim unless the latter demonstrates his willingness to convert. This prohibition is attributable to the fact that personal status legislation is based on the sharia, which forbids [Muslim] women from marrying non-Muslims.
3. Article 65 does not state that a divorced woman who remarries loses custody of her children. It states that maternal custody of male children ceases at 10 years but that the judge may extend it until the age of 16, if the mother has not remarried. The principle, therefore, is that

custody always devolves to the mother until the child reaches the age of 10, in the case of a boy, or 19, in the case of a girl. This is a privilege granted to the mother. The exception is where custody of a boy over 10 years of age may devolve to the father if the mother remarries.

4. *Khul`* is a form of divorce which allows a woman to separate from her husband by simply submitting a petition to a court, without having to give grounds for her request. The quid pro quo is that the wife pays a sum that must not exceed the value of the wedding gift. This procedure, whereby a woman may end her marriage simply because she wishes to do so, has its corollary in the option which men are given of severing the marriage bond unilaterally. In the latter case the courts have always decided, in granting such a divorce, that the fault lies with the husband and that the husband must therefore be ordered to pay his ex-wife damages as a matter of course.

Since polygamy is permitted under the sharia, the State has no plans to abolish it, but it does intend to regulate it in a draconian manner that will make it virtually impossible.

Reply 8

The state of emergency was declared in conformity with the Algerian Constitution and the Covenant; the Secretary-General of the United Nations was duly notified of the measure. The state of emergency will be lifted once the conditions that led to its declaration no longer obtain. The State, which is responsible for the safety of persons and property and for ensuring the smooth functioning of public services and institutions, takes all necessary measures to guarantee public order and public safety and continues to prosecute and punish terrorist crimes in a determined manner.

The state of emergency, which in no way hampers the enjoyment of individual, collective, associative or political freedoms, has been relaxed and all the measures imposed in that framework have been gradually revoked.

Reply 9

Under Algerian law, a terrorist act is criminalized and classified as any act directed against State security, territorial integrity and the stability and normal functioning of institutions which uses methods that violate the right to life, the fundamental freedoms of citizens and the safety of public and private property.

It follows that for an act to be classified as a terrorist offence the author must have committed a particular act for a particular purpose, namely, to infringe the right to life or citizens' fundamental freedoms, etc.

Therefore the objective that the author seeks to achieve and the means that he uses to achieve them are essential elements of the offence.

The Algerian Government has taken steps to avert and curb the terrorist threat. In addition to creating freephone services and running advertisements to sensitize public opinion to the dangers of this type of crime, it ensures that messages about tolerance and respect for others in keeping with the spirit of the Koran are disseminated and preached in mosques. Other social and economic measures are implemented in this regard and target young persons in particular.

Reply 10

1. Offences which carry the death penalty are confined to the most serious murders and similar crimes and certain offences against State security.
2. Apart from the fact that the death penalty was “abolished de facto” in Algeria after the introduction of a moratorium in 1993, not one of the laws enacted since 1995 prescribes capital punishment. Furthermore, the most recent amendments made to the Criminal Code in 2001, 2004 and 2005 and to other special laws clearly show that the trend is towards the progressive abolition of the death penalty and its replacement with penalties of deprivation of liberty (illicit drug-trafficking, armed robbery, arson) or even the complete suppression of capital offences, as in the case of the crime of economic sabotage.
3. The number of persons whose death sentences have now yet been commuted is 112. That figure is broken down according to the offence committed, as follows:
 - 28 for murder;
 - 7 for criminal association and armed robbery;
 - 74 for terrorist acts;
 - 3 for counterfeiting of money and criminal association.

Since the Criminal Code was amended in December 2006, the offences of aggravated robbery and counterfeiting of money are no longer punishable by death.

4. In 2006, 80 death sentences were handed down in absentia.

Reply 11

Over the past few years, the Algerian Government has received no communications from the Special Rapporteur on extrajudicial, summary or arbitrary executions. Moreover, the urgent, usually joint, appeals which it has received referred to “fears and concern” on the part of the Special Rapporteur on torture, who invited the Government to guarantee, and ensure respect for, the physical integrity of persons who are stopped and questioned or arrested for various reasons. In other words, they do not refer to proven and documented cases of ill-treatment.

1. All complaints about abuses or violations of citizens’ rights and fundamental freedoms, including torture and ill-treatment, are investigated both by the institution that employs the person against whom the allegation is brought and by the police. Depending on the nature and gravity of the offence, the penalty may be either an administrative or a legal penalty.
2. With regard to compensation for victims, this may take the form of civil damages awarded by a competent court or compensation based on an amicable settlement reached between the victim and the public authority which employs the person concerned. It should be emphasized that the State, in implementation of the Charter for Peace and National Reconciliation, has

created a special system for compensating the victims of the national tragedy. This mechanism is both for beneficiaries of persons who have reportedly disappeared and for low-income families of deceased terrorists.

The mechanism, established by Ordinance No. 06-01, supplements the provisions of the Act on the Civil Accord which established the principle of State responsibility, by subrogation, in compensation suits brought before the courts against persons who had renounced terrorism. It should also be stressed that State aid for victims of the “national tragedy” has taken the form not only of monetary compensation but also of various assistance and social and psychological support measures.

Medical examinations are routinely ordered after a person is remanded in custody. The remand prisoner is free to select a doctor of his own choosing; otherwise, the police officer will assign one.

Reply 12

The Government is only responsible for the documents that it publishes. Consequently, it cannot take decisions based on literature by authors whose identity, much less their motives, it does not know.

The Ad Hoc Commission on Disappearances was established on 11 September 2003, by a decision of the President of the Republic, together with its terms of reference. It is only required to submit its conclusions to the authority which created it. Only the President of the Republic can decide whether or not to make the Commission’s conclusions public.

Reply 13

According to article 109 of the Family Code, a disappeared person is a person who is missing and whose whereabouts or whether he or she is alive or dead is not known. Once the security services have been alerted by the family, they launch a search for the person who has reportedly disappeared. If the search proves fruitless, the police will report back to the family. Pursuant to the implementing regulations concerning the Charter for Peace and National Reconciliation, the families of persons whom searches fail to find can request a declaration of death by a court.

The State compensates **all the victims** of the national tragedy or their beneficiaries.

On another note, and in the framework of provision for impoverished families adversely affected by the involvement of a close relative in terrorism, a total of 11,547 applications were submitted by claimants in 45 provinces (*wilayas*). After an investigation was conducted by the Department of Social Services, a total of 6,233 applications were approved and 3,766 were rejected, representing a financial commitment in the order of 2,828,037,308.73 Algerian dinars (DA).

With regard to compensation of persons who were dismissed from their jobs for acts associated with the national tragedy, a total of 41 *wilayas* were involved and 7,974 claims were submitted, of which 4,687 were rejected, representing an appropriation of DA 2,370,715,023.49,

of which DA 1,966,256,200.76 was allocated for back payments of social security contributions (Annex 2). The total number of applications submitted was 19,521 and the budgetary allocation was DA 5,198,752,341.22.

Reply 14

In Algeria **there are no** places of incommunicado detention. All detention facilities are registered and subject to the authority of the prosecution service with competence for the area in question. Since 2003, the International Committee of the Red Cross has been authorized to carry out unannounced visits to police stations and gendarmerie brigades throughout the country. Every penitentiary has a prison register with the name of each remand prisoner or prisoner, his or her identity card number and the date of detention. This register is kept by a clerk and is signed and initialled by a representative of the judiciary. Any offence or omission relating to the maintenance of records will lay the head of the institution open to disciplinary or criminal proceedings.

Reply 15

The duration of police custody in Algeria is **48 hours**. Police custody is subject to oversight by the State prosecutor. It can only be extended by the courts. For crimes against State security, it lasts for **6 days**. However, given the immense size of the country, the complexity of investigations and the links to other crimes (drugs, money laundering, foreign ties), persons implicated in cases of subversion and terrorism **may** be held on remand for a period of **not more than 12 days**. This is an exception and not the rule.

Reply 16

There are no statistics on population displacement. There have been cases, especially in 1997, where, in view of the deteriorating security situation, some families spontaneously left their homes or farms on a temporary basis. Once the authorities had restored security they escorted the population back to their homes and took appropriate measures to prevent the recurrence of terrorist attacks upon civilians.

Reply 17

Migrants who are in Algeria legally benefit from the protection of the law and procedural guarantees on an equal footing with Algerian citizens, in accordance with the principle of non-discrimination.

Reply 18

1. The police statement serves as a piece of information but is not regarded under Algerian law as evidence. This means that statements which a person being questioned makes in the presence of a police officer can be retracted before the examining magistrate, whose wide investigative powers allow him to recommence an inquiry from the very beginning. The trial courts cannot base a decision on anything other than the evidence that is presented during the hearing and discussed by the parties before them.

2. The police officer must provide the remand prisoner with all means necessary to communicate immediately with his family and to receive visits. Furthermore, when the term of custody expires, an obligatory medical examination must be carried out on the person on remand. The examination is conducted by a doctor of the remand prisoner's choosing or, failing that, by a doctor assigned by the police officer. The doctor's certificate is annexed to the file.

3. Other measures that may protect individuals from ill-treatment are assured through oversight of police activities, monitoring of remand procedures and visits by the State prosecutor to remand facilities. Anyone implicated in a criminal case is entitled to the assistance of counsel from the time that he is first brought before the State prosecutor.

Reply 19

Remand prisoners must be brought before a court within the time limit established based on the nature of the offence and, in any event, as soon as their police statement is completed. The purpose of the most recent amendments to the Code of Criminal Procedure was to strengthen the rights of the defendant during the various phases of a criminal trial, including the pre-trial preliminary inquiry. In practical terms, this entailed the introduction of new provisions concerning:

- The obligation of police officers to notify the State prosecutor, by means of a detailed report, of all custody measures applied;
- The obligation of police officers to inform persons placed on remand of their legal rights.

Reply 20

In Algeria Islam is the State religion (Constitution, art. 2). In order to maintain public order and security, rules have been established to prevent excesses and immoderation and to ensure that the religion is properly understood. The measures, **which are applicable to Islam**, have been extended to include faiths other than the Muslim faith.

Having noted that the immediate problems of certain citizens were being exploited and that different methods of seduction were being used, in the name of freedom of belief, to attract such people and cause them to question their commitment to Islam, the Algerian State took steps to invite everyone seeking to proselytize religion to comply with the law.

The National Faith Commission is chaired by the Minister for Religious Affairs and comprises six members, including a representative of the National Advisory Commission for the Promotion and Protection of Human Rights. Its mission is to oversee religious affairs and ensure that freedom of worship is safeguarded.

The Commission ensures respect for religion and addresses concerns relating to the profession of beliefs. It issues its opinion on the accreditation of religious associations and the allocation of buildings for the performance of religious observances.

Reply 21

Algerian citizens, whatever their status, must abide by the law. The persons in question do not benefit from any immunity that could exempt them from this requirement. An examination of the situation over the past two years with regard to press offences reveals the following facts:

- Many of the legal cases brought are matters of ordinary law and have nothing to do with the exercise of the profession;
- A fair number of press offences were not prosecuted;
- After appeal, convictions by courts of first instance were turned into either lighter sentences or acquittals;
- There was a reduction in the number of registered cases, which fell from 20 in 2006 to 8 in 2007.

On the occasion of International Day for Freedom of Information (May 2006), journalists convicted pursuant to a final judgement that was in effect on the date of the promulgation of the relevant presidential decree benefited from a presidential pardon. This measure was followed by a second pardon issued on the occasion of the forty-fourth anniversary of the National Youth Festival, and which affected some 200 journalists.

Reply 22

The sovereign choice expressed by the Algerian people on 29 September 2005 must be respected and the State has a duty to apply it strictly.

Since the adoption of the National Charter for Peace and Reconciliation, **no one** in the country **has been prosecuted** for expressing a view or opinion on this subject.

The maintenance of public order, the defence of individuals, the protection of property and the consolidation of peace and national reconciliation are fundamental pillars of the Charter. Therefore, to date, no criticism of the, virtually unanimous, endorsement of the Charter by the Algerian people has been observed and there have been no reports concerning constraints imposed on anyone who may have taken such action.

Reply 23

Under Algerian law, an announcement must be made at least three days prior to the holding of a public meeting. For a public demonstration, authorization must be obtained at least eight working days before the date on which the demonstration is due to be held. Similarly, any demonstration that takes place without authorization or after being banned is regarded as an unlawful assembly. Meetings or demonstrations that are not authorized and/or are dispersed are therefore those in which the relevant representatives have failed to comply with the aforementioned procedures and regulations.

The conference in question (February 2007) was not authorized because the announcement was made by a local association, "Djazairouna", whose jurisdiction should not extend beyond the

wilaya in which it was registered (the *wilaya* of Blida). The ban on public (street) demonstrations in Algiers is still in force.

Reply 24

Example of the suspension or dissolution of an association at the request of the public authorities

Name: Islamic Charitable Association

Procedure: Judicial procedure, at the request of the public authorities (*wilaya* of Algiers) Ruling No. 1655, dated 15 October 2002, issued by the Algiers court

Grounds: Activities incompatible with the statutes of the association and unlawful extension of the scope of its activities from the *wilaya* to the national level

Statistics on the number of requests for accreditation of an association

- Total number of requests: 80,706
- Accredited national associations: 952
- Accredited local associations: 79,023

Time taken to obtain accreditation: 60 days, pursuant to article 7 of Act No. 90-31 of 4 December 1990, concerning associations

Number of requests for accreditation of associations denied: 731

Grounds on which accreditation can be refused

- The association was established on the basis of an object that is incompatible with the established institutional order, public order, public morals or the prevailing laws and regulations;
- The founding members of the association do not have the right to exercise their civil and civic rights;
- The association was established by members whose conduct is incompatible with the interests of the national liberation struggle;
- The application to establish the association is not in conformity with Act No. 90-31 of 4 December 1990, concerning associations.

Bodies involved in decision-making

1. *National associations*

- Relevant ministries
- Security services

2. *Local associations*

- Administrative authorities of the *wilayas* concerned
- Security services
- Local government authorities (municipalities)

Reply 25

According to the organic law on associations and political parties, no one who has been convicted of a crime may be a founding member of a political party.

The Charter for Peace and National Reconciliation which was adopted by a referendum stipulates that engagement in political activity is forbidden to anyone who has participated in the:

- Exploitation of religion for criminal ends which led to the national tragedy;
- Formulation and implementation of a policy promoting violence against the nation and State institutions;
- Commission of crimes entailing the deaths of individuals, group massacres, bomb attacks in public places or places frequented by the public, or rapes.

The Charter stipulates that political activity, **in any form whatever**, shall be barred to anyone who participated in the crimes described above.

Reply 26

During the course of their studies at the Legal Service Training College, trainee judges take a three-month training module, which takes up one and a half hours per week, on public freedoms and human rights. The main subsidiary subject is international covenants and treaties.

For several years now, serving judges have been able to attend a week-long seminar on human rights. The subsidiary subjects discussed during the week include, inter alia, fair trials, protection of prisoners' rights and the application by the courts of the covenants and treaties ratified by Algeria.

The Gendarmerie Nationale and Sûreté Nationale also teach their trainees human rights principles.

Reply 27

The report submitted to the Committee for its consideration is a treaty obligation of the Algerian **State**. Its preparation necessitated, firstly, the contribution of ministerial departments and national institutions with primary responsibility for implementing the Covenant. The National Advisory Commission for the Promotion and Protection of Human Rights, an equal opportunities body comprising representatives of civil society, was involved throughout the entire process of the drafting of the report. Through its representatives, it was able to make its views known on all the articles and to amend the report as a member of the steering group every time that it felt the need to do so. The national media reported that the Algerian Government was due to submit the present report at Geneva on 23-24 October 2007.
