



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

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COMMITTEE AGAINST TORTURE

Fortieth session

SUMMARY RECORD (PARTIAL)* OF THE 819th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 5 May 2008, at 3 p.m.

Chairperson: Mr. GROSSMAN

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Third periodic report of Algeria (CAT/C/DZA/3, CAT/C/DZA/Q/3 and Add.1)

1. At the invitation of the Chairperson, the members of the delegation of Algeria took places at the Committee table.
2. Mr. JAZAÏRY (Algeria) said that at times the questions posed by the Committee appeared to exceed its mandate, and the experience somewhat resembled the universal periodic review. His delegation was of course aware that it was also an indication of interest, on the part of the Committee, in the steps taken by his Government to face the challenges created by a history of terrorist attacks in the 1990s. He stressed that the Government of Algeria had imposed a state of emergency in order to establish the rule of law under exceptional circumstances. Not only did it safeguard the smooth operation of public institutions and services, and the protection of life and property, but it had also enhanced the protection of democratic processes. Some aspects had gradually been eased, but the main political parties representing the majority of Algerians had expressed their opposition to lifting the state of emergency.
3. He affirmed the Charter for Peace and National Reconciliation as an exclusive and inalienable instrument of the Algerian people, which they had accepted through a referendum. His delegation therefore did not believe that the will of Algerian citizens should be reduced to a mere legality, whose definition remained debatable. He highlighted the fact that article 45 of the Charter did not provide amnesty, but promoted the recognition of international practice that protected the armed forces from legal action, in the course of carrying out their mission to protect persons and property, secure the territory, and preserve national institutions. Article 45 should also be interpreted as an assertion of the will of the people to be respected, and for those who violated popular decisions to be brought to justice.
4. The Charter itself should be seen as a patriotic response to a national situation within a complex international setting. In Algeria's specific case, the State had defended the nation against unprecedented levels of terrorist attack. He wondered whether certain States that had achieved high standards in the field of human rights had experienced the types of challenges that Algeria had faced, and, if not, why Algeria should be singled out. Moreover, why should terrorists be put on the same level as those who put their lives on the line to protect their countries?
5. Issues such as the definition of terrorism, the duration of custody for persons suspected of engaging in terrorist acts, both of which were already subjects of much controversy, had also been raised by the Committee. Algeria was in favour of a comprehensive convention on terrorism that drew a distinction between the right of peoples to combat colonial or foreign occupation, and the scourge of transnational crime. The Government of Algeria had signed a number of international treaties for the suppression of terrorism and was deeply engaged in international efforts to eliminate the threat.

6. Mr. HAMED (Algeria) confirmed that confessions and police reports extracted under torture during criminal investigations were inadmissible as evidence. As stated in paragraph 86 and onwards of the written replies to the list of issues (CAT/C/DZA/Q/3/Add.1), even spontaneous confessions might be retracted.
7. He said that under the Code of Criminal Procedure, persons held in custody enjoyed the right to contact their next of kin, to be examined by a medical doctor, and to be informed of their rights. The assistance of legal counsel during custody was not stipulated among the above-mentioned provisions, but was being considered as part of the review of the Criminal Code.
8. In confirming the fact that capital punishment had not been carried out since 1993, he said that amendments to the Criminal Code had reduced the offences for which the death penalty could be imposed, and in effect, the death penalty was usually commuted to a sentence of life imprisonment.
9. Although military tribunals were originally established to deal with military matters and treason was not considered a specifically military offence that fell exclusively within the purview of military justice, it could however be handled in a military court when penalties exceeded a period of five years. Military tribunals were presided over by a judge in public hearings and their decisions could be appealed before the Supreme Court.
10. In response to a case of suicide during custody, which had been the subject of a communication, he said that an enquiry had been launched, but that the initial post-mortem report by the forensic pathologist had stated that the death had been due to hanging as an act of suicide.
11. Mr. Abdelali LAKHDARI (Algeria) shared the view that military justice was incompatible with the rule of law because military courts did not offer all guarantees or conditions for a fair trial. In addition to the comments made earlier, he said that military courts were standing bodies whose competence was established by the law. Since the enactment of the 1989 Constitution, treason had not been considered a political crime, but rather a crime posing a threat to national security and territorial integrity under ordinary law. He took the opportunity to illustrate a case brought before the Supreme Court that presented a conflict of competence between civil and military justice systems.
12. The role of the criminal investigation police in counter-terrorism, as defined in the Criminal Code, consisted of gathering evidence on crimes and the arrest of perpetrators. The Code of Criminal Procedure governed the appointment of criminal investigation police officers and other law enforcement and intelligence officials, under the auspices of the Ministry of Justice. The jurisdiction of those officials covered the territory of the unit to which they belonged, but in the case of certain crimes, such as money-laundering, terrorism, organized crime and cybercrime, their competence extended to the entire national territory. Magistrates, judges and prosecutors provided guidance to the criminal investigation police and often accompanied police officers on their enquiries. The public prosecutor supervised all criminal investigation police officers. A system for assessing the service by the public prosecutor was

introduced in 2001. More direct control was exercised by an indictment chamber (chambre d'accusation), which served as a disciplinary body for bringing charges of misconduct against the police. By virtue of a special decree, the Criminal Code conferred responsibility on the Minister of Justice for providing guidance on the mechanisms adopted for implementing the mandate of the criminal investigation police.

13. Mr. HAMED (Algeria) drew the attention of the Committee to the content of paragraphs 81 to 85 of the third periodic report, relating to legislation on the definition of torture, and stressed that the criminal investigation police were also covered by those provisions.

14. Mr. Mokhtar LAKHDARI (Algeria) said that there was no specific definition of terrorism in domestic legislation. While that was indeed a concern, article 87 bis of the Criminal Code defined the context in which common law offences could constitute acts of terrorism. That article was always applied in combination with another article criminalizing the act committed and specifying the relevant sanction.

15. Mr. HAMED (Algeria) said that there had been no reduction in the age of criminal responsibility, which remained at 18 years. Minors aged between 16 and 18 could be tried in a criminal court only when they were accused of committing an act of terrorism as part of a network including adults. Those minors could not be sentenced to death or given life imprisonment, and their sentences were always half those handed down to adults.

16. Mr. BESSEDIK (Algeria), replying to a question on measures to combat violence against children, said that domestic legislation prohibited corporal punishment in schools and compelled all health practitioners to report cases of violence against children, minors and detainees to the relevant authorities. A national strategy to combat violence against children had been launched in conjunction with the United Nations Children's Fund. It focused on preventing violence and covered all those working with children, child protection and the social reintegration of victims of violence. Draft legislation on child protection, currently under consideration, made it an offence for teachers, other education staff, social workers and State officials to fail to report signs of violence against children in schools or in the family. Parents, guardians and custodians who committed acts of moral or physical violence against children in their care were more heavily penalized. Under the Criminal Code, violence against children was an aggravating circumstance. Several other human rights bodies also took action to promote and protect children's rights, and a free hotline had been set up for anyone to report violence against children.

17. Ms. HENDEL (Algeria) said that women who had been victims of violence during the national tragedy had been given psychological care in rehabilitation centres, housing, microcredit, education and assistance to ensure their social reintegration. There had been no documented cases of perpetrators of rape being granted amnesty. Members of the judiciary, the police and the military were instructed on the prevention of violence against women as part of their human rights training. A national strategy to combat violence against women involved all sectors in measures to combat such violence, including the establishment of services to ensure protection for victims, support for those in difficult situations and the opening of advice centres. New legislative provisions would criminalize sexual harassment, introduce DNA testing for paternity, provide for more severe sanctions for violence against women and extend awareness-raising measures.

18. Mr. Mokhtar LAKHDARI (Algeria) said that the victims of violence in Hassi Messaoud in July 2001 had not been targeted because they were women. Many new arrivals went there in search of employment with the local oil companies. Those already there tended to view new arrivals as a threat, which created tension and had acted as a catalyst for the violence. Since it had been a case of crowd violence, identifying individual perpetrators had been difficult. Any new evidence would, however, lead to fresh investigations.
19. Mr. SOUALEM (Algeria) said that no international consensus had been reached on norms for judging civilians in military courts, or vice versa. The death penalty was not handed down to minors, or to women who were pregnant or breastfeeding.
20. The Government had compensated all proven victims of the national tragedy under the Charter for Peace and National Reconciliation. Some 13,000 complaints of disappearances had been lodged. They had been investigated and over 5,000 family members had received compensation. Some 4,000 people had received reparation for having lost their jobs during the national tragedy, and over 1,000 had been reinstated.
21. Mr. Mokhtar LAKHDARI (Algeria) said that the procedure followed in the case of persons who had disappeared during the national tragedy was that enshrined in the Family Code. Under sharia law, a disappearance was registered in court by a family member; one year later the person was officially declared disappeared, and after a further four years, declared dead. The procedure had been simplified under the Charter for Peace and National Reconciliation, and no longer required the family members to wait for any period of time to pass. A person was declared presumed dead on registration of a disappearance during the national tragedy. The same procedure had been implemented in the wake of the floods in 2001.
22. Mr. TOUDERT (Algeria) said that the principle “The rule of law begins with the police” was introduced in human rights training to ensure that all police officers adhered to strict respect of human rights. Implementation of those rights by the police was monitored at the local, regional and national level. Staff were held directly responsible at each level of the police hierarchy. Handbooks on international human rights standards were distributed to police to strengthen their training.
23. Mr. Abdelali LAKHDARI (Algeria) said that human rights was also a central tenet of the training provided to members of the National Security Department. The gendarmerie authorities had produced a pocket guide on international human rights standards and distributed it to all security staff including army personnel.
24. Mr. JAZAÏRY (Algeria) said that the national press had widely disseminated the conclusions of the report of the National Advisory Commission for the Promotion and Protection of Human Rights. That body had its own website. Judges could be posted anywhere in the country during their first 10 years of tenure. Thereafter, they could choose to remain in one location. He emphasized his Government’s willingness to cooperate with all requests for visits from United Nations mandate holders.
25. The CHAIRPERSON (Country Rapporteur) asked whether article 45 of Ordinance No. 06-01 of 27 February 2006 concerning the implementation of the Charter for Peace and National Reconciliation, which allowed for claims of torture by defence and security forces to be

declared inadmissible, was compatible with article 2, paragraph 2, of the Convention. The relatives of disappeared persons must be free to request an investigation, which did not imply any culpability on the part of the security forces. The names of the disappeared persons and further details of the criteria for reparation to the relatives of the victims should be provided. Persons seeking to find out the truth and obtain compensation faced considerable obstacles, including the requirement of ascertaining that a relative was dead.

26. Ms. BELMIR (Alternate Country Rapporteur) said that the disappearance of persons might involve the abandonment of a family or other factors. The State must assume responsibility for the disappearance not because it had caused a person to disappear but because it had a duty to protect its citizens. Persons with lost relatives had the right to appeal to the courts. She enquired whether the State party had established a time limit for the current state of emergency, which was hindering relatives of disappeared persons from knowing what had happened to them.

27. Ms. GAER, referring to the systematic sexual violence committed during Algeria's civil war in the 1990s described in the report of the Special Rapporteur on violence against women (A/HRC/7/6/Add.2), enquired about the extent to which the clause in the National Charter exempting rapists from amnesty had been applied to individual cases. Information on any investigations into the incidence of rape by defence and security agents would be useful.

28. Ms. SVEAAS said that no circumstances could be invoked as a justification of torture, including the security reasons cited in the National Charter. Further assurances were needed that amnesty would not be extended to those who had committed acts of torture and that the disappearances would be investigated.

29. Mr. MARINÑO MENÉNDEZ enquired about reports of barracks used in various towns as interrogation centres. He said that all criminal investigations should be conducted by the appropriate judicial or prosecutorial authorities. It was not clear why the relatives of Mounir Hammouche, who allegedly died under torture while in detention, had been denied access to the coroner's report on his death.

30. Ms. KLEOPAS stressed that the fundamental right of a detained person to have access to a lawyer was essential for his or her protection from inhuman treatment.

31. Mr. JAZAÏRY (Algeria) said that his delegation had in no way suggested that the Committee had overstepped its mandate. Furthermore, it was not challenging the principle that torture could not be justified under any circumstances. His delegation would provide statistics on the number of persons arrested and punished for acts of torture. Article 45 of the Ordinance concerning the Charter did not prohibit the prosecution of defence and security officers accused of human rights violations during the civil war. Rather, they could not be prosecuted for carrying out counter-terrorist military operations. Such operations were not subject to prosecution unless they involved acts which constituted crimes such as rape. However, the relatives of a terrorist could not hold a soldier accountable for shooting that terrorist during a military operation. Furthermore, there was no amnesty granted to any persons who had engaged in torture and other human rights violations under any circumstances. With respect to the punishment of persons who attempted to discredit the security forces, terrorists had been conducting a propaganda campaign in the name of defending freedom. The honour of persons defending the nation against terrorist attack, many of whom had lost their lives while doing so, must be protected.

32. Mr. SOUALEM (Algeria) said that when it was not possible to establish how a person disappeared, common law was applied. The presumption of death in such cases did not mean an end to enquiries into the disappearance. Any new evidence could be introduced into a case of disappearance.

33. Mr. JAZAÏRY (Algeria), referring to visits by mandate holders, said that his Government would welcome any such visits provided that their purpose was clearly stated. In Algeria, the courts established whether a person was considered to have disappeared. Affected families could appeal to the courts or use international channels. Following the report by the Special Rapporteur on violence against women of the amnesty of persons who had committed rape during the civil war, his Government had requested the names of the alleged perpetrators. To date, it had not received information on any specific cases of such amnesty.

34. Mr. HAMED (Algeria) said that the 10-year period during which judges could be reassigned had been established for the sake of fairness. For example, living conditions in the north of the country were considerably different from those in the south. Concerning the case of Mounir Hammouche, his relatives had been given access to transcripts of all the proceedings.

35. Mr. JAZAÏRY (Algeria) noted that in Algeria the names of disappeared persons were considered a private matter like the names of divorced persons. It was not in the country's tradition to publish them.

36. The members of the delegation of Algeria withdrew.

The discussion covered in the summary record ended at 5.35 p.m.