Collectif
des
familles
de
disparu(e)s
en
Algérie

**Alternative Report to the African Commission on Human and Peoples' Rights**

**Consideration of Algeria's Fifth and Sixth Periodic Reports**

**57th Ordinary Session**

**Observations of Collective of Families of the Disappeared in Algeria (CFDA) with contributions from Djazairouna and Maître Kouceila Zerguine, member of the Algerian League for the Defence of Human Rights and Network of Lawyers for the Defence of Human Rights**

**Observations on Algeria's compliance with its obligations resulting from the African Charter on Human and Peoples' Rights (2010-2015)**

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## 1. INTRODUCTION

The Collective of Families of the Disappeared in Algeria (hereinafter referred to as "CFDA"), Djazairouna and Maître Kouceila Zerguine would like to thank the African Commission on Human and Peoples' Rights (hereinafter referred to as "the African Commission") for giving them the opportunity to express their views on the human rights situation in Algeria. They have placed high hopes in the vigilance of the African Commission, an essential body for the promotion and protection of human and peoples' rights in Africa.

We wish to draw the African Commission's attention to the complex and painful situation facing the Algerian citizens and especially the family members of victims of enforced disappearances and families of victims of terrorism.

In fact, the Algerian authorities are continuing to seriously violate many provisions of the African Charter on Human and Peoples' Rights (hereinafter referred to as "ACHPR") as well as the Algerian legislation itself. The authors of the report therefore find that Algeria's fifth and sixth reports conceal the serious and continual violations of the rights granted by the ACHPR by not providing any details on the application of the texts but rather just descriptions.

The current period (2010-2015) is marked by the Tunisian and Egyptian popular revolutions followed by foreign intervention in Libya and popular demonstrations in Syria which, violently suppressed, have descended into civil war. It is amidst these North African revolutions that the autonomous syndicates and human rights associations, one of whom being CFDA, have launched the National Coordination for Change and Democracy (CNCD). One particular result of the movement launched by the CNCD has been the gaining the lifting of the state of emergency in February 2011, 19 years after it was first announced.

Nevertheless, lifting the state of emergency remains a symbolic victory. In fact, as was also the case back in the mid-1990s, the political authority has integrated government-related provisions of the state of emergency in common law which then changed the rules of exception within common law.

Following the official lifting of the state of emergency and the accompanying "reforms", the government wanted to maintain the illusion of change where reality is marked by the continuous pursuit of an unchanged objective: to suppress and reduce all attempts of civil society to organise themselves in an autonomous way and to prevent the emergence of all structures of intermediary mediation, be it associative, syndical or political between the citizens and the existing government. In fact, the Algerian authorities have, during the current period, hindered the exercise of freedoms of all persons who have been critical of the political authority.

This continuity can also be found in the treatment of the families of victims of enforced disappearances. Contrary to what the government continues to proclaim to the Algerian public and foreign spokespersons, the "missing persons' files" are far from closed. The CFDA contests the Charter for so-called Peace and National Reconciliation and its implementing provisions which consecrate impunity and advocates oblivion. It refuses the impunity of the perpetrators of serious or massive violations of human rights, regardless of their identity, be they State officials, terrorists or members of armed Islamic groups. The CFDA has been demanding Truth and Justice for victims of this for more than a decade. The CFDA refuses to leave these violations of human rights committed by members of armed Islamic groups unpunished and is the reason behind their commitment to the "Coalition of Associations of Victims of the Conflict of the 1990s" alongside associations for victims of terrorism, Djazaïrouna and Somoud.

**The CFDA is convinced that only a process of transitional justice will enable peace to be consolidated and a true legal State to be established in Algeria. A commission for establishing the truth must be implemented so that light can be shed on the fate of all victims of a "nameless war" which ravaged the country for more than a decade. Both collective and individual compensation should be granted to victims and their families so that the Algerian citizens can rebuild their lives in a long-term and truly peaceful environment.**

The aforementioned continuity is also symbolised by the intimidations and repression subjected to all human rights activists and defenders, who are criminally prosecuted for unarmed assembly, as soon as they protest to denounce the allocation of social housing, demand their right to work or even more recently oppose the exploitation of shale gas.

The continuity can likewise be found in the adoption of new law no. 12-06 of January 2012 relating to the associations which increases the authority's power of control in the creation through to the dissolution of the association, and leads to serious violations of the right to the freedom of association.

Lastly, the continuity can be found in the ill-treatment and arbitrary arrests which continue to be exercised as well as the violations of rights to health and discrimination faced, especially against women.

## 2. ENFORCED DISAPPEARANCES

During the 1990s, Algeria experienced a period of terror and unimaginable violence. The civil population was the target of many armed Islamic groups as well as State officials. As such, the Algerian population was a victim of arbitrary arrests and incarceration, extrajudiciary executions, torture, rape, attacks and enforced disappearances[1].

According to the figures recognised by the National Consultative Commission for the Promotion and Protection of Human Rights (CNCPPDH) in its 2008 annual report, more than 8,000 people were reported missing without their fate ever having been determined neither individually nor collectively.

In its recommendation no. 11 of 2008, the African Commission has urged Algeria to: *"find an appropriate solution to the problem of missing persons and ensure that a fair compensation is paid to the legal successors"*.

According to the report presented by the State Party: *"The Charter for Peace and National Reconciliation is a democratic response which includes the legal, social and human management of the consequences of this national tragedy. [...] The legal successors have been granted, without any discrimination, compensation in the form of lump-sum death benefits or monthly allowances paid from the State budget"*[2].

### A. On the legislative framework and its practice

The "Civil Concord" adopted by referendum and the "Charter for Peace and National Reconciliation" (hereinafter referred to as the Charter) adopted in 2005 were presented to the Algerian government as the only solution for bringing peace to the country. However, these provisions are far from having consolidated long-lasting peace and implementing a real process for establishing the Truth.

In fact, contrary to Article 29 of the Algerian Constitution which guarantees that *"all citizens shall be equal before the law [...]",* Article 45 of ordinance no. 06-01 of 27 February 2006 implementing the Charter states that: *"no legal proceedings may be initiated against an individual or a collective entity belonging to any component whatsoever of the defence and security forces of the Republic, for actions conducted for the purpose of protecting persons and property, safeguarding the nation or preserving the institutions of the Democratic and Popular Republic of Algeria. The competent judicial authorities are to summarily dismiss all accusations or complaints".*

[1] See also CFDA's report, *Human Rights Put Algerian Regime to the Test – The illusion of change*, 2011-2013 report, Chapter 4 Enforced disappearances, p. 50-61

[2] Algeria, *Fifth and Sixth Periodic Reports, 2010-2014,* December 2014, p. 9

This article has established a practice that had already been well established and consecrates the legal impunity of the State officials who committed crimes in the 1990s. This means that it is impossible for families to access justice. Furthermore, the prosecutors invoke this provision for refusing to investigate complaints filed by families despite the latter knowing the identity of the perpetrator behind the disappearance. Article 45 therefore constitutes denial of the right to truth and justice.

In addition, the compensation procedure implemented in ordinance no. 06-01 is subject to the provision of a certificate of disappearance and death certificate.

As such, according to Article 30: *"An official report of the certificate of disappearance of the person concerned is established by the judicial police following an investigation. This is issued to the legal successors of the missing person or to any other interested person within a period not exceeding one year from the date of the publication of the present ordinance in the Official Journal."*

In practice, however, the judicial police officers (OPJ) do not initiate any inquests and simply interrogate the families. In fact, although the families bring crucial elements on the perpetrators of the person's disappearance and the circumstances of their arrest, none of this information is mentioned on the certificate of disappearance and those responsible are never questioned by the judicial authorities. Furthermore, it is often indicated on the certificate of disappearance that the missing is "killed in a clash" even though this is a complete contradiction of the family's declarations, which are often testimonies to the arrest of the missing person by the State officials. The OPJ often refuse to provide a certificate of disappearance on the grounds that the missing person is not present on their list or will be sought out by their services. However, this list has never been made available to the public.

In addition, although Article 31 limited the procedure of requesting a certificate of disappearance to one year from the publication of ordinance no. 06-01 in the Official Journal, it must be noted that this article is not respected by the Algerian authorities. In actual fact, even today, 9 years later, the authorities still force families demanding an investigation be opened and resisting the intimidations of the State to follow the procedure for compensation.

Once supplied with the certificate of disappearance, the legal successors have six months to request a death certification (Article 31). The request for a death certificate is extremely painful for families who, in the absence of a real inquest, continue to hope that their loved ones are still alive. The United Nations' Committee Against Torture has, in their concluding observations on Algeria on 16 May 2008, incidentally recognised that: *"by making the granting of compensation conditional on a death certificate, it falls on the families to renounce their right to truth and demands they officially deny the existence of the crime of enforced disappearances, but even worse, to end the life of their loved one. This provision therefore constitutes cruel, inhuman and degrading treatment of the loved ones of the missing*

*(§13)".* The Human Rights Committee, however, considers that: *"to oblige families of disappeared persons to have the family member declared dead in order to be eligible for compensation, while the investigation is ongoing, is a breach [...] in that it makes the availability of compensation dependent on the family's willingness to have the family member declared dead"*[3].

Furthermore, the calculation of the compensation is not clear cut. Article 39 simply states that: *"to calculate and pay the compensation [...], provisions planned by the current legislation are used for the benefit of deceased victims of terrorism"*. As such, according to this provision, the disappeared are forced to be deceased because of terrorism and not because of the State officials. The compensation therefore does not come from equity for the victims of enforced disappearances and is not calculated as part of real prejudice suffered by the family. As a result, this is not full and complete compensation.

Article 46 of the Charter for Peace and National Reconciliation's implementing provisions stipulates that: *"Anyone who, by speech, writing, or any other act, uses or exploits the wounds of the National Tragedy to harm the institutions of the Democratic and Popular Republic of Algeria, to weaken the state, or to undermine the good reputation of its agents who honourably served it, or to tarnish the image of Algeria internationally, shall be punished by three to five years in prison and a fine of 250,000 to 500,000 dinars. Criminal proceedings are initiated by the public prosecutor".*

This Article penalises any and all opinion or criticism of the violent events of the 1990s which would contradict the official version as presented by the Algerian government. This Article thus forbids any debate on the topic, whether it be about the families of the missing or victims of terrorism, associations for the defence of human rights, media etc.

The families therefore no longer know to which authority they can turn, the adjudicating courts often declaring themselves incompetent in favour of another. As a result, Mr Nasser Bellamine addressed a complaint calling for an inquest to be opened into the enforced disappearance of his brother to the public prosecutor in the court of Rouiba. The sister of the missing person was then summoned by the public prosecutor of the court of Rouiba who then declared that she should write to the public prosecutor of the military court of Blida. The sister went to the military court where the public prosecutor requested that she go to the Khemis El Kechna police station. But as she arrived, the military officers informed her that she should write to the public prosecutor in the court of Rouiba. This situation is very detrimental to the families who put all their energy into these steps which are futile and prevent them from gaining Truth and Justice.

In addition to losing those answerable to the law by giving incorrect information when collecting it, the Algerian authorities refuse the families' exhumation requests for

[3] Human Rights Committee, Communications Nos. 1917/2009, 1918/2009, 1925/2009 and 1953/2010, *Prutina et al. in Bosnia and Herzegovina,* 28 March 2013, para. 9.6 and individual opinions of Salvioli and Rodríguez Rescia

identification reasons and systematically force them to follow the compensation procedure implemented by ordinance no. 06-01. Nadia Bendjael had addressed a request for the exhumation of her brother's body, whose name she had found in the cemetery records at El Alia which houses 3000 unmarked graves. In order to prove or disprove that the body buried in this cemetery is her brother, she contacted the Attorney General at the Algiers court to request the exhumation to identify him. Following a first refusal, she addressed a plea to the Public Prosecutor. After having interrogated family members multiple times, the Attorney General forced the family to follow the compensation procedure and closed the exhumation request without further action.

Whereas the Bendjael family refused, other families have no choice must to follow the procedure for compensation due to their difficult financial situation. But what many families do not know is that once the procedure has been initiated, they no longer have the right to demand justice by requesting an investigation be opened. One such example is Ms Fatma Zohra Boucherf who, in 2009, received an official report from the General Attorney which informed her that she no longer had the right to write to national authorities on account of having already been compensated. Ms Boucherf is persevering and nevertheless continuing to send different letters to Algerian authorities for an inquest to be launched.

The authorities also do not hesitate to intimidate families to dissuade them from continuing their efforts. In fact, families are often summoned by military or police officers under the pretext of wanting to hear their testimonies. In reality, however, there is no ongoing investigation and the summons are solely to order the families to stop filing complaints and to accept the compensation. The authorities sometimes go beyond and cast doubt on the families' testimonies, even if these family members had witnessed the arrest. This was the case for Ms Latra Kebabi, who refused to change her testimony for the head of the gendarmerie, who maintained that the Algerian Department of Intelligence and Security (DRS) was not behind her brother's disappearance.

In conclusion, in light of the components developed below, the State of Algeria breaches Articles 3, 5, 7, 9 of the African Charter on Human and Peoples' Rights with regards to families, and Articles 3, 4, 5, 6, 7, 11, 16 and 18 with regards to the missing persons. Therefore, contrary to their statements, the Algerian State does not respect recommendation no. 11 of the African Commission.

## B. Recommendations

The CFDA calls on the African Commission to condemn the State Party for these violations of the African Charter on Human and Peoples' Rights and to force them to:

- Lead in-depth and impartial investigations into the cases of enforced disappearances;
- Implement an independent and impartial system to establish Truth and Justice;

- Cease harassing families of the missing and authorise their peaceful demonstrations;

- Repeal the Charter for Peace and National Reconciliation and its implementing provisions, especially Articles 45 and 46 and ordinance no. 06-01;

- Offer actual full and complete compensation to families of the missing which takes into account the prejudice suffered;

- Not make compensation conditional on the provision of a certificate of disappearance and death certificate;

- Follow through with the exhumation requests from the families of the missing;

- Ratify the Convention for the Protection of All Persons Against Enforced Disappearances;

- Accept a visit from the United Nations' Working Group on Enforced or Involuntary Disappearances.

## 3. VIOLATIONS OF THE RIGHT TO FREEDOM OF ASSEMBLY AND THE HARASSMENT OF HUMAN RIGHTS DEFENDERS

Article 11 of the African Charter on Human and Peoples' Rights guarantees freedom of assembly.

In its recommendation no. 7, the Commission had called on the State Party to: *"Guarantee the safety of human rights defenders in the exercise of their duties in accordance with the UN Declaration on Human Rights Defenders and the principles enshrined in the African Charter".*

The State Party considers that: *"when human rights defenders carry out legitimate activities, individually or in association with others, they are protected by the law both when they are involved in court proceedings and when they are being prosecuted"*[4].

The response from the Algerian authorities is very dissatisfying in this regard as the State Party simply states that human rights defenders are protected by the law.

### A. On the legislative framework

In Algeria, the right to assemble and demonstrate in public is guaranteed by Article 41 of the Constitution and by law no. 89-28 of 31 December 1989, revised by law no. 91-19 of 2 December 1991[5].

According to Article 2 of law no. 91-19, a public meeting is: *"a brief gathering of people, organised jointly* ***in an enclosed space*** *accessible to the public* ***away from public streets*** *[...]"*. Article 8 similarly stipulates that: *"Public gatherings cannot be held in a religious location or public building not intended for such purposes.* ***Public gatherings are forbidden on public streets****".*

These two articles make it clear that the Algerian legislation considerably restricts the exercise of the right of freedom of assembly and public demonstration. Not only must these gatherings and assemblies be held exclusively in an enclosed space, the space used must also be intended for these purposes.

Furthermore, under Article 9 of Law No. 91-19, the purpose of the gathering or demonstration is extremely restricted: *"It is forbidden in any public gathering or demonstration to express opposition to national values, to undermine the symbols of the first November revolution, public order and morals"*. Faced with these very imprecise conditions, the Algerian

[4] Algeria, *Fifth and Sixth Periodic Reports, 2010-2014,* December 2014, p. 8

[5] See also CFDA's report, *Human Rights Put Algerian Regime to the Test – The illusion of change,* 2011-2013 report, Chapter 7 Freedom of assembly and peaceful demonstration, p. 86-97

administration has a wider margin for manoeuvre in assessing the compliance of these criteria. This provision considerably reduces the role of the Algerian civil society, especially associations, who would like to contribute their opinions on the Algerian government's policies. This is especially the case for CFDA who has been forbidden on many occasions from holding seminars, private meetings with the civil society and whose members have been intimidated and even sometimes threatened.

The right to assemble and demonstrate in public is subject to prior authorisation. In fact, according to Article 17: *"authorisation must be requested from the wali eight clear days before the planned date of the event"*. Immediately after the request, the *wali* must supply a receipt of the file application. The *wali* has at least 5 days from the planned date to accept or refuse the request in writing. However, CFDA notes that the *wali* never delivers the receipt of the file application to those who make the authorisation request to organise a peaceful gathering. This provision therefore goes against the right of assembly and public demonstration.

Article 19 stipulates that: *"Any demonstration that goes ahead without permission or after being banned is regarded as a mob"*. This article confirms the State Party's willingness to restrict the right to assemble and protest peacefully. The penalty for the organisers is severe. They risk a prison sentence of between 3 months and one year and a fine of between 3,000 and 15,000 dinars according to Article 23[6]. Article 23 also applies to all persons who breach the provisions of Article 9 of Law No. 91-19, which stipulates that: *"it is forbidden in any public gathering or demonstration to express opposition to national values, to undermine the symbols of the first November revolution, public order and morals"*.

The term "gathering" is very important to the rushed Article 19 as it also appears in Article 97 of the Penal Code which prohibits *"any unarmed gatherings of a nature that disturb the public peace"* on any public streets or in a public location.

Article 97 of the Penal Code has a greater scope of application as it applies to all persons participating in an unarmed gathering, whereas Article 23 of Law No. 91-19 specifically targets organisers of an unauthorised demonstration. However, Article 98 of the Penal Code stipulates a prison sentence identical to that in Article 23 of Law No. 91-19, namely a two month to one year prison sentence for *"all unarmed persons who did not leave an armed or unarmed gathering of which they were affiliated after the first warning"*.

The Algerian authorities almost systematically invoke Article 97 of the Penal Code to take legal action against human rights defenders who participate in peaceful gatherings. In fact, as

[6] Article 23 of Law No. 91-19 of 2 December 1991: *"Either a prison sentence ranging from three months to a year, a fine between 3,000 and 15,000 Algerian Dinars, or both, is given to anyone found responsible for: 1) making a false statement to mislead the conditions of the planned demonstration; 2) participating in the organization of an unauthorized demonstration; 3) breaching the provisions of Article 9 of the present Law"*.

soon as activists participate in peaceful gatherings unauthorised in advance by the *wali*, they become guilty of "unarmed gathering" and can be criminally prosecuted.

Furthermore, despite the lifting of the emergency state, peaceful gatherings remain prohibited in the capital, Algiers. The authorities invoke a decree from 18 June 2001 to justify this prohibition. However, this text has not been published in the Official Journal. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, has made a number of recommendations to Algeria following his official visit in April 2011. He has especially recommended that Algeria repeal the decree from 2001[7] and to modify Law No. 91-19 in order to establish a system of notification for public demonstrations instead of a system of prior authorisation[8].

## B. On the practice

The Algerian State, contrary to the answer given in recommendation no. 7, guarantees neither legally nor in practice the safety of human rights defenders while performing their official duties. Human rights activists and defenders are actually subjected to judicial harassment and are criminally prosecuted for simply having participated in a peaceful gathering.

The number of examples of arrests of activists who took part in peaceful gatherings and cases of judicial harassment against human rights defenders is very high.

Families of the missing and of activists participating in CFDA's peaceful gatherings are also very often victims of police violence and are even sometimes arrested and held for many hours at the police station.

On 29 September 2013, the CDFA had called for a peaceful gathering in front of the Ministry of Justice with other associations. This location had been chosen to denounce the Charter for Peace and National Reconciliation adopted on 29 September 2005 because of its highly symbolic nature. The gathering was meant to have started at 10 am, but there was already a large police presence in place long before this time. At around 11 am, more than ten police vans with police officers showed up and arrested more than half of the demonstrators, among whom were very elderly mothers of the disappeared. These people were taken to two different police stations where the officers ordered them to switch off their mobile phones, rendering it impossible for them to be contacted to ensure that they were safe. They were finally released after 2 hours of detention. This detention was arbitrary; they were deprived of their freedom for exercising their right to freedom of assembly.

[7] *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, 12 June 2012, A/HRC/20/17, § 110

[8] *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, 12 June 2012, A/HRC/20/17, § 111

Hacène Ferhati, brother of a missing person and activist for the CFDA association, is a victim of harassment from the Algerian authorities. On 2 February 2014, whilst he was at a hotel in Béjaïa, uniformed policemen knocked on his door at 5 am, claiming to be from the "reception". The police officers then took him to the police station to interrogate him on his activities and presence in Béjaïa.

On 8 March 2013, the CFDA had called for a peaceful gathering at the Place du 1er Mai for International Women's Day. Some activists and a dozen of loved ones of missing persons, one of whom was a father aged 85, were arrested by law enforcement and spent the day at the police station.

Even this year, in March 2015, many gatherings were organised for 8 March. Cherfia Kheddar, President of the Djazairouna association (association of victims of Islamic terrorism) took part in a peaceful gathering in front of the Grande Poste in Algiers. She was violently arrested and beaten up by police officers who took her to the police station by force. She was only released in the evening after being detained for the day. This detention was arbitrary; she was deprived of her freedom for exercising her right to freedom of assembly.

More recently, for the International Day of Children, the CFDA had called for a peaceful gathering at the Place du 1er Mai in Algiers for 1 June 2015. Two police vans and a police car carrying a dozen police officers abruptly intervened to disperse the demonstration. The officers snatched the banners from the demonstrators, who were mainly parents of the disappeared. The association's communications officer was arrested by police and forcefully taken down to the police station.

In 2014, the anniversary celebrations of the Algerian revolution of 1 November took place in a climate of journalistic censorship and prohibition of gatherings. Many associations, trade unions and journalists had called for a march of the "Place de la Liberté de la Presse" [*Freedom of Press Square*] towards the National People's Assembly, but this was hindered by police officers. Police had been deployed in large numbers since the morning in Algiers' city centre, especially by the Grande Poste. Many demonstrators were assaulted and arrested by the officers. Journalists were forbidden from taking photos and filming the gatherings and their material was confiscated.

Activists for the rights of the unemployed and autonomous syndicates also experience judicial harassment from the Algerian authorities. One such example is when eight activists of the National Committee for the Defence of the Rights of Unemployed Workers (CNDDC) organised a sit-in in front of the Laghouat tribunal for 28 January 2015 to denounce the legal proceedings against Mohamed Rag, another CNDDC activist. On 11 February 2015, they were sentenced by the Laghouat tribunal to 12 months in prison, 6 months of which were suspended, and given a fine in line with Article 147 of the Penal Code. The eight activists then appealed and went on hunger strike in protest of this decision. On 25 March 2015, the Laghouat Court of Appeal confirmed this sentence in the first instance. The lawyers created

an appeal in cassation which confirmed the decision of the Court of Appeal and therefore condemned the activists to a six-month prison term.

Rachid Aouine was released on 2 July 2015 after serving his six month prison sentence. This CNDDC activist was also subjected to judicial harassment. He had been sentenced on 9 March 2015 by the correctional tribunal of El Oued to a six month prison sentence and a fine for *"organising an assembly"* in line with Article 100 of the Penal Code. His crime was simply having posted an ironic comment on Facebook urging police officers to: "demand your rights instead of suppressing protestors"[9].

The CFDA wrote many urgent appeals to request the activists' release, two of which were dated 30 March 2015 and addressed to the Special Rapporteur on Human Rights Defenders, Ms Reine Alapini-Gansou and the Special Rapporteur on Freedom of Expression, Ms Faith Pansy Tlakula.

Blogger Youcef Ouled Dada filmed three police officers ransacking a house and published the video on his Facebook account. Instead of investigating the infraction committed by the officers, the authorities arrested Youcef on 27 March 2014 and took him into custody. Prosecuted for "publishing and sharing photos and a video affecting national interest" and "contempt of the governing body", he was sentenced on 10 June 2014 by the Ghardaïa tribunal to two years in prison and a fine of 100,000 Algerian Dinars. His lawyers then appealed the ruling in the first instance, but the Ghardaïa Court of Appeal confirmed this sentence in the first instance on 18 August. The lawyers have lodged an appeal in cassation and are waiting for the Supreme Court to examine the case in September 2015. Youcef Ouled Dada's video was broadcast on television and the Public Prosecutor has ordered that a judicial inquest be opened into the police officers. However, the police officers are currently still performing their official tasks and have not been suspended from their duties.

Furthermore, the situation in the region of the M'zab valley in the Ghardaïa province (South Algeria) since 2013 is very worrying. Since the end of 2013, there have been violent clashes between different local communities Châmbites (Arabs) and Mozabites (Berbers). These violent events have led to more than a dozen deaths and more than 400 persons injured. Some shops and houses have also been pillaged and burned down[10] without police intervention to re-establish order and ensure public safety.

After a slight lull, violence once again resumed in Ghardaïa in July 2015 and firearms were used by certain members of the local population. These renewed riots resulted in more than 20 deaths. More commercial centres and homes were once again ransacked and burned down. In order to control the situation, the President of the Republic has called on the army to re-establish peace in the region. The Prime Minister has even declared: *"The army has been*

[9] https://www.hrw.org/fr/news/2015/03/08/algerie-arrete-pour-un-message-ironique-publie-sur-facebook

[10] http://www.france24.com/fr/20150710-algerie-armee-calme-precaire-ghardaia-armee-bouteflika-berbere-arabe-affrontements

*granted all rights to re-establish order, including issuing a curfew prohibiting demonstrations and gatherings"*. The CFDA is very concerned over the situation in the south and that the authorities have called on the army to re-establish order. Dozens of activists have been arrested by police officers, including Kamel Eddine Fekhar, a 52 year-old doctor, member of the LADDH and President of the Movement for the Autonomy of M'zab, was arrested on 9 July 2015. Having been immediately taken into custody, he was only brought before a judge on 15 July 2015. According to his lawyer, Maître Salah Debouz, his client is being legally harassed by the authorities who want to place the blame on him for the violence taking place in the region. Eighteen charges have been brought against him based on Article 87b of crimes qualified as acts of terrorism or subversive acts[11] of the Penal Code.

At the end of 2014, the citizens of In Salah (south Algeria) organised protests against the exploitation of shale gas. In this dry region of the country, water is very precious and essential for the survival of the population and their agriculture. The residents are therefore very concerned of the risks of pollution from the water tables by such exploitation as this and the health problems it could cause. Opponents of the exploitation of shale gas demand a moratorium and a national debate on this exploitation.

On 28 February 2015, the situation degenerated and violent clashes took place. The repression of the demonstrators by the military officers was very violent. A dozen activists were arrested.

A few days before, on 24 February 2015, several marches in support of the In Salah residents and opponents of the exploitation of shale gas were organised across the country. In Algiers, the gathering was prohibited and more than twenty people were arrested. The anti-riot forces were present on a massive scale and pushed back the demonstrators using their batons and shields.

In conclusion, contrary to their statements, Algeria does not respect recommendation no. 7 and violates Articles 7 and 11 of the African Charter.

## C. Recommendations

Faced with this alarming statement, the authors of the report call on the African Commission to force the State Party to:

- Respect Article 11 of the African Charter on Human and Peoples' Rights which guarantees the right to peaceful assembly;

- Repeal the decree from 18 June 2001 which prohibits gatherings in Algiers;

[11] See Section 5. Arbitrary detention and torture

- Modify Law No. 91-19 to allow gatherings and meetings on public streets, establish a system of notification for public demonstrations instead of a system of prior authorisation, abolish Article 9 and remove imprisonment and fines as punishment;

- Not hinder the activities of associations, human rights defenders and, most importantly, all persons living in Algeria who wish to organise and participate in a peaceful gathering;

- Cease the judicial harassment of human rights defenders;

- Ensure that law enforcement does not hinder the exercise of the right to peaceful assembly, and systematically leads an investigation in the event of a violation of Article 11 of the Charter;

- Accept a visit from the Special Rapporteur on Human Rights Defenders;

- Accept a visit from the United Nations' Special Rapporteur on the rights to freedom of peaceful assembly and of association;

- Ensure public safety and the safety of activists in Ghardaïa as well as ensure that law enforcement does not pillage or burn down homes and commercial centres and do not proceed with arbitrary arrests or the harassment of human rights defenders or minorities;

- Respect the Luanda Guidelines, especially Articles 3, 4, 5, 6, 7, 8, 10 and 11.

## 4. VIOLATIONS OF THE RIGHT TO FREEDOM OF ASSOCIATION

The State Party must respect Article 10 of the ACHPR which guarantees freedom of association.

According to recommendation no. 9 of the 2008 African Commission, the Algerian State should: *"establish non-discriminatory working relations with NGOs"*.

For this reason, the State Party stipulates in its fifth and sixth periodic report that: *"there is smooth cooperation with [...] NGOs, in accordance with Algerian laws and regulations, in particular the provisions of Law No. 12-06 of 12 December 2012 on associations"* and that associations may cooperate with foreign NGOs within the framework of partnership subject to the prior agreement of the competent authorities which responds to a transparency issue[12]. For the Algerian authorities, the new Law No. 12-06 of 12 January 2012 on associations: *"has strengthened freedom of association, regulated in a more precise manner the activities of associations and has addressed legal shortfalls"* [13].

Adopted in the context of the "Arab Spring" in 2011 and presented by the authorities as a liberal law, Law No. 12-06 of 12 January 2012 is in fact much more restrictive than the previous Law No. 90-31. The newer law actually increases the authority's power of control in the creation through to the dissolution of the association, and leads to serious violations of the right to the freedom of association[14].

The restrictions on the freedom of association imposed by Law No. 12-06 have already been strongly condemned by bodies promoting and protecting human rights[15]. In May 2013, Mr Maina Kiai, Special Reporter on the freedom of peaceful assembly and of association, recommended the State Party revise this law so that it complies with the norms and standards of the freedom of association and peaceful assembly[16].

What's more, on 30 April 2015, the European Parliament adopted a resolution notably condemning the new Law No. 12-06 and calls on the Algerian authorities: *"to repeal Law 12-06 on associations and to engage in a genuine dialogue with civil society organisations in*

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[12] Algeria, *Fifth and Sixth Periodic Reports, 2010-2014,* December 2014, p. 9
[13] Algeria, *Fifth and Sixth Periodic Reports, 2010-2014,* December 2014, p. 35
[14] See also CFDA's report, *Human Rights Put Algerian Regime to the Test – The illusion of change,* 2011-2013 report, Chapter 9 Freedom of association and trade union freedoms, p. 112-121; see also the CFDA report, *Algeria: The Slow Suffocation of Associations – Study on the application of Law No. 12-06 of 12 January 2012 on associations*, June 2015
[15] *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, 12 June 2012, A/HRC/20/17, § 83; Convention on the Rights of the Child, *Consideration of the reports submitted by the State Parties under Article 44 of the Convention. Concluding observations: Algeria,* 18 July 2012, CRC/C/DZA/CO/3-4, § 27; Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women, Algeria,* 23 March 2012, CEDAW/C/DZA/CO/3-4, § 19
[16] *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 30 May 2013, A/HRC/23/39, § 9

*order to frame a new law that is in conformity with international human rights standards and the Algerian Constitution"*[17].

These recommendations, however, have never been implemented. On the contrary, Law No. 12-06, already restrictive, is interpreted and applied in a drastic and arbitrary manner by the Algerian administration which then leads to even greater violations of the right to the freedom of association.

## A. Analysis of the law and its practice

### ➢ Defining the association

The association is defined by Article 2 of Law No.12-06, which henceforth demands that the purpose and activities of any association should pursue a goal that benefits public interest "according to national values and worth" and should respect public order, good morality and the laws and regulations in place. These notions, however, are vague and imprecise and allow the authorities a large margin of appreciation for monitoring and censoring associations.

Regarding the nature of the activities which can be engaged in, the list has been expanded on in three new areas: environmental, charity and humanitarian. Even if this list is not exhaustive, it is a shame that the notion of "human rights" is not included. Furthermore, the administration grants itself the power to monitor and impose on the associations' activities in certain cases.

### ➢ Forming the association

***Associations formed before Law No. 12-06***

According to Article 70 of Law No. 12-06, associations formed before the reform were obliged to comply with the new law within two years. This provision aims to cleanse the civil society by allowing the dissolution of all associations not complying with the law, even though they should have been protected against an arbitrary rejection and interruption of their activities[18].

In accordance with the terms of Article 70, this compliance is easily realised by filing the new articles with the competent authority. However, in the large majority of cases, the administration demands a complete dossier of the association's formation consisting of the same pieces as those indicated in Article 12 of Law No. 12-06. Imposing these new restrictions on associations outside of the legislative framework is an abusive interpretation of

[17] *European Parliament resolution of 30 April 2015 on the imprisonment of workers and human rights activists in Algeria,* 30 April 2015, 2015/2665(RSP)
[18] *Report on the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai,* 21 March 2012, A/HRC/20/27, p. 16

the law. Some associations have therefore been discouraged by the complexity of the dossier and have consequently abandoned their attempts to comply.

***Associations formed after Law No. 12-06***

Law No. 12-06 reiterates and tightens the preventative regime implemented by Law No. 90-31. According to the former Article 7 of Law No. 90-31, founding members only needed to file a declaration of creation with the competent public authority to then be issued an acknowledgement of registration within sixty days. In practice, the administration did not systematically issue the acknowledgement of registration, preventing the associations from legally forming themselves.

Law No. 12-06 henceforth imposes a more restrictive system of prior authorisation on the exercise of freedom of association. As such, the formation of the association is dependent on the prior filing of the founding declaration and provision of an acknowledgement of registration, which acts as approval. The administration can provide an acknowledgement of registration or decide to refuse.

***The formation dossier***

The freedom of association entails simple, free and fast procedures[19]. The State Party considers that Law No. 12-06 relaxed the procedure for forming associations[20]. However, an analysis of the law and its practice shows the contrary: that the formation procedure is much more complicated, costly and slow than under the previous Law No. 90-31.

Article 12 of Law No. 12-06 has increased the list of required documents for the dossier for forming the association by adding extracts of the founding members' criminal records, the official report from the general meeting drawn up by the court bailiff and supporting documents for the head office address. These new requirements slow down the formation procedure and provide the administration with means of additional control. In fact, validating the extracts of the criminal records is limited to a period of three months. As such, by the time it takes the founding members to request theirs, the extracts of the criminal records will more often than not no longer be valid.

What's more, the court bailiffs are not always willing to work with the associations because it is not a very profitable but rather time-consuming task. The cost of a court bailiff's statement is high, thus restricting founding members who wish to create small local associations but have low budgets.

[19] *Report on the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai,* 21 March 2012, A/HRC/20/27, p. 16
[20] Algeria, *Fifth and Sixth Periodic Reports, 2010-2014,* December 2014, p. 35

The number of required founding members, however, remains very high. To create a simple communal association, 10 founding members are needed. The number has been increased to 21 founding members to form an association between provinces coming from three different provinces and to 25 founding members to create a national association from at least twelve provinces.

The four categories of association are each linked to a different administrative authority. Many are national associations which encounter difficulties in obtaining a meeting with the Ministry of the Interior's association offices to file their dossier. Members of certain associations have stated that they went to the office but were unable to enter. They called the green number listed on the Ministry's website but the number is unreachable. They then resolved to send their dossier by post with acknowledgement of registration.

Finally, Article 8 of Law No. 12-06 requires the competent authorities to provide a receipt of the filing at the time the founding declaration is filed. Whereas in theory, this obligation is legal protection for the associations, it is never respected in practice and thus becomes an arbitrary instrument for the benefit of the administration. As such, the Ministry of the Interior hardly ever provides any filing receipts to the national associations who have filed a formation dossier. The founding members therefore do not have any documents enabling them to prove that the founding declaration has been made and that the dossier was complete. For the province associations, the filing receipt is usually always provided with delays, from several days to several weeks to even several months. Through its silence or tardiness, the administration thus leaves the associations in the dark, meaning the time limit for the examination for compliance cannot begin, thus preventing any contesting.

***The authorities' decision***

Article 8 of Law No. 12-06 stipulates a delay of between 30 and 60 days to allow for the administration to examine the compliance of the formation declaration to the law and provide either an acknowledgement of registration or a refusal. The planned delays are excessively long and do not appear to be justified. Contrary to what the State Party insists[21], the study on the practice shows that these obligations are a restriction in the creation of associations.

Moreover, no text stipulates that the founding members must be subjected to a police investigation. In practice, however, this police investigation nearly always takes place, extending the deadline even more and sometimes even blocking the procedure.

Furthermore, the associations state the provision of the acknowledgement of registration depends on how arbitrary the administrative authorities are – whether they provide the acknowledgements late or do not make a decision at all. The practices of the administration differ from one province to another.

[21] Algeria, *Fifth and Sixth Periodic Reports, 2010-2014,* December 2014, p. 35

In theory, where there is no response from the administration, the association is considered formed in their own right. In practice, however, the acknowledgement of registration is essential to be able to function: for opening a bank account, organising meetings in public places, requesting grants from foreign investors etc. this acknowledgement is required.

Without this acknowledgement of registration, the founding members may also be liable for criminal penalties if they implement their activities. In fact, Article 46 of Law No. 12-06 expands the scope of application of the criminal penalties which no longer apply exclusively to representatives of *"unauthorised"* associations, but also to non-registered associations. Although the term of imprisonment has been reduced, the amount of the fine has greatly increased. This provision acts as a sword of Damocles hanging over the associations' members and its practices constitute a genuine threat to association members and lead to self-censorship among civil society, who slow down or stop their activities pending the acknowledgement of registration.

- **The tasks of an association**

***Their obligations***

Article 19 of Law No. 12-06 relating to the transmission of information constitutes a tougher process as more documentation is required and the transmission delays are stricter, which contradicts the right to the associations' private tasks[22].

Moreover, Article 38 of Law No. 12-06 requires associations to have a unique bank account with a public bank as well as keep double-entry bookkeeping, validated by an auditor. Nevertheless, this represents a great financial cost, especially for small associations which have just been created and have little budget.

***Their activities***

Public events such as seminars must be organised within the framework of Law No. 91-19 of 2 December 1991, modifying and completing Law No. 89-28 of 31 December 1989 relating to public meetings and demonstrations. However, this law stipulates a system of authorisation, which is restrictive by nature. Add to this the administration's arbitrary practice of hardly ever providing the compulsory acknowledgement and not hesitating to refuse for no reason on the evening or on the day itself.

As such, associations which have not yet received the acknowledgement of registration are faced with difficulties in organising activities outside of their headquarters. Already approved associations also organise their events to be at their headquarters in the majority of cases in

[22] *Report on the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai,* 21 March 2012, A/HRC/20/27, p. 17

order to avoid the administration's oppressiveness and arbitrariness. They therefore prefer to organise more limited meetings in their local areas to not face any rejections.

***Cooperation with foreign associations***

Contrary to what the State Party maintains[23], cooperating with foreign associations is not smooth. On the contrary, it is very regulated by Articles 21, 22 and 23 of Law No. 12-06. It is submitted for the opinion of the Minister of the Interior and Minister of Foreign Affairs, multiplying the authorities who can exert power of it. The approved Algerian associations and foreign associations must pursue the same or similar goals. This condition shows the authorities' willingness to isolate Algerian civil society by preventing associations from forming a network, expanding and reinforcing their activities by collaborating with foreign associations.

Furthermore, the accession and cooperation must respect the national values. Once again, the law does not specify how these two criteria can be fulfilled, leaving the authorities a large margin of appreciation and opens the way to arbitrariness.

In practice, a large number of associations cooperate with foreign associations. The majority did not request the authorities' approval and those who did request it, have yet to receive a response.

***Their resources***

The right to access resources is an integral part of the right to freedom of association. This should be guaranteed for both registered and non-registered associations[24]. Regarding foreign financing, Law No. 12-06 still encompasses the relations between civil and foreign society even more strictly. As such, associations can no longer receive financial aid from outside of the relations with partners authorised by the Ministry of the Interior, which violates their right to freedom of association[25].

By imposing a partnership framework, the authorities have a means of arbitrarily monitoring the associations' resources, their activities and their foreign partners. A complete prohibition of receiving foreign financial aid is therefore imposed *de facto* notably because of the vague nature of the legislative provisions and the impossibility for most associations to register. These provisions thus result in the considerable stifling of the evolution and development of the associations.

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[23] Algeria, *Fifth and Sixth Periodic Reports, 2010-2014,* December 2014, p. 9
[24] *Report on the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai,* 21 March 2012, A/HRC/20/27, p. 18
[25] *Report on the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai,* 21 March 2012, A/HRC/20/27, p. 18

***Suspension and dissolution***

The procedure introduced by Law No. 12-06 contradicts international human rights by expanding the administration's means of surveillance and the risk of arbitrariness. According to Article 39 of Law No. 12-06, the association can, starting from now, have its activities suspended or be dissolved: *"in the event of interference in the country's internal affairs or attack on the national sovereignty"*. Article 39 also prevents associations from placing interest in their country's affairs and from being analytical and critical of the State in its politics, even though this is essential in all democracies.

Furthermore, even though the suspension was dependent on a court decision under Law No. 90-31, an administrative decision is now enough to suspend an association's activities.

- **Foreign associations**

Based on Law No. 90-31, foreign associations were tolerated by administrative authorities without being legally registered. The majority had signed mutual agreements with different ministers which allowed them to open bank accounts, declare their employees, acquire goods and implement activities. Law No. 12-06 has tightened the regime imposed on foreign associations, which is discriminatory compared to the one imposed on national associations.

***Their creation***

Foreign associations are subject to a formation procedure and a system of prior authorisation. In principle, however, associations with headquarters in their country of origin should not have to be subjected to a creation procedure as they have already been legally formed in their country of origin. What's more, the conditions for the grant of approval are structured and specific. As such, the approval granted by the Minister of the Interior is henceforth submitted for the opinion of the Minister of Foreign Affairs and minister responsible for the affected sector.

Furthermore, the foreign natural persons have difficulties obtaining visas and resident cards at a professional level. As such, certain employees work with one month visas and must leave Algeria once a month to apply for a renewed visa.

As with all national associations, foreign associations should constitute a creation dossier consisting of several documents. However, the documents required are not adapted to the specificities of the foreign associations. The foreign associations are also faced with difficulties in arranging an appointment to file the dossier.

Law No. 12-06 imposes an agreement between the governments, which is an additional hurdle for foreign associations in Algeria. In fact, this provision demands a purpose from the association and even obliges it to act as a representative of their government. If the two States

do not have a good relationship, it is highly probably that no foreign association from this State shall be able to engage in their activity in Algerian territory.

Finally, the administration has a delay of 90 days to provide the acknowledgement of registration. Article 64 of Law No. 12-06 stipulates the possibility of objecting a refusal by an express decision notified by the declarants. A foreign association which sees itself being notified of an express decision of an agreement being refused can call on the Council of State. However, in the absence of a decision, the association remains unable to call on the Council of State and cannot regularise its situation.

***Rights and obligations***

The amount of financing received externally is limited according to the regulatory processes. However, no regulation has yet to be adopted. Furthermore, certain banks request the approval from certain associations and freeze or close their accounts in the meantime, thus preventing them from working.

When implementing their activities, the foreign associations are faced with difficulties bringing invited professionals who are not always able to be issued visas. Moreover, not having an approval considerably limits their range of actions. Associations are therefore prevented from working with certain public institutions, such as health centres for example which, from now on, request the approval whereas a simple presentation of the agreement concluded with the Ministry of Health sufficed before Law No. 12-06.

***Conclusion:***

All associations are faced with the complexity and arbitrariness of the administration, both at the formation and the implementation of their activities. Law No. 12-06 is therefore a serious hindrance to the development of the associative sector in Algeria. The legislation and practice of authorities actually allow associations to be maintained in an unclear legal situation and in a climate of fear, therefore enabling a slow suffocation.

## B. Recommendations

Faced with this alarming statement, the authors of the report ask the African Commission on Human and Peoples' Rights to:

- Denounce the oppressive nature of Law No. 12-06;

- Formulate the following recommendations to the Algerian authorities:
    1. Repeal Law No. 12-06 of 12 January 2012;
    2. Discuss in-depth a new law relating to associations compliant with

constitutional rights and international human rights, guaranteeing:

- the bringing into compliance the functions of the associations legally registered under Law No. 90-31;
- the implementation of a notification system;
- a procedure for a simple, accessible, non-discriminatory, fast and free formation;
- the systematic and immediate provision of a filing receipt;
- the right for all associations, including those not registered, to be free to determine their statute, structure and activities, and to work freely and immune from any interference from the State;
- the removal from the term of imprisonment and fines for leaders of not registered, unapproved, suspended or dissolved associations which continue their activities;
- the right to the associations' private tasks;
- the right for all associations, including those not registered, to access funds and resources in the country and abroad without prior authorisation;
- the right for foreign associations to be able to freely establish themselves in Algeria and to benefit from the same rights as national associations;

3. Ensure members of the administration are training with regards to the right to freedom of association and structure the practices to prevent any risk of arbitrariness;
4. Ensure that members of the administration violating the right to freedom of association are personally liable for these violations before the competent tribunals.

## 5. ARBITRARY DETENTION AND TORTURE

The State Party is obliged to respect Article 5 of the ACHPR which prohibits torture and cruel, inhumane and degrading treatment and Article 6 forbids any arbitrary deprivation of freedom.

According to recommendation no. 13 of the 2008 African Commission, the Algerian State should: *"take measures and ensure compliance with the Robben Island Guidelines regarding the prohibition and prevention of torture"*.

In their Fifth and Sixth Periodic Reports, the State Party considers that: *"The legal system deters law enforcement officers from using torture, which is a terrible practice in the minds of the people"* and that they collaborate with international bodies who promote and protect human rights[26]. The State Party has not provided a single piece of information on the cases of torture or arbitrary detention committed during the period covered by the report.

The reality is, not only does the State Party not collaborate in an effective manner with bodies protecting and promoting human rights, but the legislative framework is not enough to prevent and punish acts of torture, ill-treatment and arbitrary detentions which have taken place during the period of the said report[27].

### A. On the collaboration of the State Party with the bodies promoting and protecting human rights

The State Party believes that they collaborate with the Committee against Torture[28].

In actual fact, the last report by Algeria to the Committee against Torture dates from January 2006, when the fourth periodic report ought to have been issued to the Committee against Torture in June 2012. Contrary to their statement, the State Party appears to be behind by 3 years.

Furthermore, the Algerian State has not respected its international obligations during this period and, as such, has been condemned many times by both international and regional bodies promoting and protecting human rights.

In May 2015, the Committee for the Prevention of Torture in Africa (CPTA) stated that: *"Many credible reports and allegations that may amount to torture or ill-treatment during the reporting period came to the CPTA's note in its bid to seek implementation of the Robben Island Guidelines: A) In Algeria, the UN Committee against Torture, in Communication No.*

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[26] Algeria, *Fifth and Sixth Periodic Reports, 2010-2014,* December 2014, p. 11-12, 24-26

[27] See also CFDA's report, *Human Rights Put Algerian Regime to the Test – The illusion of change,* 2011-2013 report, Chapter 3 The Judiciary System, p. 43-49

[28] Algeria, *Fifth and Sixth Periodic Reports, 2010-2014,* December 2014, p. 12

*376/2009: Bendib v. Algeria, found in favour of the complainant who had submitted that her son was subjected to torture in violation of the provisions of CAT, and had died while in police custody.[5] Further, the UN Committee found the State in violation of CAT in Communication No. 402/2009: Abdelmalek v. Algeria, in which the Complainant alleged that he was unlawfully detained by officials of Algeria and that he was subjected to brutal acts of torture, which have left him with physical injuries and psychological trauma"*[29].

In fact, Algeria has been condemned three times by the Committee against Torture since 2010[30]. No response to any of these condemnations has been made and no recommendations have been implemented.

The United Nations' Working Group on Arbitrary Detention has also disclosed the lack of response from the Algerian State for the case of Mr Laskri's arbitrary deprivation of freedom, who has also been subjected to acts of torture and ill-treatment[31].

As such, contrary to the statements made by the Algerian State, the latter has not respected the international and regional human rights regarding the prohibition of torture and arbitrary detention and does not cooperate effectively with bodies promoting and protecting human rights.

## B. On the legislative framework

### ➢ Victims of enforced disappearances

In Algeria, thousands of people have been victims of enforced disappearances during the conflicts in the 1990s.

These thousands of enforced disappearances constitute a violation of Article 5 of the ACHPR. Enforced disappearance actually constitutes a form of torture, a debasement and is often accompanied by physical and mental torture on both the missing person and their family. It violates human dignity and represents a negation of the missing person's legal personality. It is also a violation of Article 6.

Enforced disappearance additionally constitutes a form of torture for the victim's family, especially due to the family's suffering, anxiety and uncertainty on the fate of the missing person.

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[29] *Inter-Session Activity Report (April 2014 to April 2015) and Annual Situation of Torture and Ill-treatment in Africa Report, Presented to the 56th Ordinary Session of the African Commission on Human and Peoples' Rights*, 2015, p. 12-13

[30] Committee against Torture, Communication No. 402/2009, *Nouar Abdelmalek v. Algeria*, 13 June 2014; Communication No. 376/2009, *Djamila Bendib v. Algeria*, 23 December 2013; Communication No. 341/2008, *Fatiha Sahli v. Algeria*, 4 July 2011

[31] United Nations' Working Group on Arbitrary Detention, *Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session, 22 April–1 May 2014, No. 17/2014 (Algeria),* 1 July 2014, A/HRC/WGAD/2014/17

Regarding enforced disappearances, the State has an obligation to achieve results for families of the victim to either find the missing person or their body. In the event of the opposite happening, it is considered that the inhumane and cruel treatment is ongoing for the disappeared person's family[32].

Since the 1990s, despite the innumerable administrative and legal steps taken by the families of the missing, the Algerian authorities have never initiated any public action with the aim of investigating the fate of these missing, of identifying, prosecuting and punishing those behind the enforced disappearances.

On the contrary, the State Party adopted the Charter for Peace and National Reconciliation in 2005 and its implementing provisions which establishes a system of impunity. Article 45 of ordinance no. 06-01 of 27 February 2006 actually states that: *"no legal proceedings may be initiated against an individual or a collective entity belonging to any component whatsoever of the defence and security forces of the Republic, for actions conducted for the purpose of protecting persons and property, safeguarding the nation or preserving the institutions of the Democratic and Popular Republic of Algeria. The competent judicial authorities are to summarily dismiss all accusations or complaints".*

However, according to point 16 of the Robben Island Guidelines, international crimes such as torture may not be subject to an exemption of prosecutions[33]. The State Party is obliged to conduct an impartial and efficient investigation without delay each time there is reasonable grounds for believing that an act of torture has been committed on all territory under its jurisdiction, to prosecute the authors of these acts[34] and compensate the victims[35]. Article 45 of ordinance no. 06-01 consequently contradicts Article 5 of the ACHPR which constitutes a violation of the obligation imposed by the State Party to achieve results on the missing persons and their loved ones.

What's more, ordinance no. 06-01 stipulates compensation in favour of the families of the disappeared. According to Article 27 of ordinance no. 06-01: *"the victim of a national tragedy is defined as any person reported missing in the context of a national tragedy"*. The second paragraph of this Article 27 adds that: *"the status of victim of a national tragedy is a result of a certificate of disappearance established by the judicial police following an investigation to no avail".* This certificate of disappearance opens the right to file for an application before the competent jurisdiction for the declaration of a death certification notably by the legal successors. Only those in possession of a definitive death certificate can

[32] Human Rights Committee, Findings, Communications Nos. 1917/2009, 1925/2009, 1925/2009 and 1953/2010, *Prutina et al. v Bosnia and Herzegovina*, 28 March 2013, Individual opinion of Committee member Fabián Salvioli (partly dissenting), para. 3; Human Rights Committee, Findings, Communication No. 2003/2010, *Selimović v Bosnia and Herzegovina*, 17 July 2014, para. 12.5

[33] Committee against Torture, *Concluding observations of the Committee against Torture, Algeria*, 16 May 2008, CAT/C/DZA/CO/3, § 11

[34] *Robben Island Guidelines*, points 17 to 19

[35] *Robben Island Guidelines*, point 50

obtain the compensation laid down in Article 37 of the ordinance, in which compensation is exclusive to all other reparation in the name of the State's civil responsibility.

In these aforementioned concluding observations of 2008 relating to Algeria, the Committee against Torture confirmed that the obligation for the loved ones of the victims of enforced disappearances forced to obtain a death certification to be granted compensation: *"could constitute a form of inhumane and degrading treatment"*. The Human Rights Committee also recognised in March 2013 that: *"to oblige families of disappeared persons to have the family member declared dead in order to be eligible for compensation, while the investigation is ongoing, is a breach of article 2, paragraph 3, read in conjunction with articles 6, 7 and 9 in that it makes the availability of compensation dependent on the family's willingness to have the family member declared dead"*[36]. The State Party is therefore recommended: *"to abolish the obligation for family members to declare their missing relatives dead to benefit from social allowances or any other forms of compensation"*.

As such, the compensation procedure laid down by ordinance no. 06-01 imposing loved ones of the missing to have the death of the missing person legally established in order to be granted the compensation represents a cruel, inhumane and degrading form of treatment for families of the disappears and violates Article 5 of the ACHPR.

- **Using confessions extracted through torture**

According to Article 213 of the Algerian Code of Criminal Procedure: *"as with any evidence, the evaluation of confessions is a matter for the judge".* None of the internal law's provisions clearly clarifies that all declaration, established as being extracted under torture, is dismissed if presented as a piece of evidence in proceedings, in accordance with Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The absence of such a provision also contradicts point 29 of the Robben Island Guidelines.

In practice, however, confessions extracted under torture are admitted in legal proceedings[37].

As such, the Committee against Torture has already recommended in its concluding observations of 2008 that Algeria: *"amend its Code of Criminal Procedure to make it fully consistent with Article 15 of the Convention"*[38]. However, no modification has yet to be made.

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[36] Human Rights Committee, Communications Nos. 1917/2009, 1918/2009, 1925/2009 and 1953/2010, *Prutina et al. v Bosnia and Herzegovina*, 28 March 2013, para. 9.6 and individual opinions of Salvioli and Rodríguez Rescia; Communication No. 1997/2010, *Rizvanović c. Bosnia and Herzegovina*, 21 March 2014, para. 9.6; Communication No. 2003/2010, *Selimović v Bosnia and Herzegovina*, 17 July 2014, para. 12.7

[37] See below: Medjoub CHANI

[38] Committee against Torture, *Concluding observations of the Committee against Torture, Algeria*, 16 May 2008, CAT/C/DZA/CO/3, para. 18

- **Fundamental guarantees of the detainee**

The right to have access to a lawyer is part of the fundamental guarantees of a person deprived of freedom and which should be applied as soon as the freedom is deprived in accordance with point 20 of the Robben Island Guidelines and points 4 and 8 of the Guidelines on the conditions of an arrest, being held in custody and pre-trial detention in Africa.

In 2008, the Committee against Torture had already recommended the Algerians State amend its internal legislation so that those in custody can have unconditional access to a lawyer on their arrest[39].

Since the amendment of the Code of Criminal Procedure of 23 July 2015[40], the law stipulates the intervention of a lawyer during custody. As such, according to Article 51a bis of the Code of Criminal Procedure: *"The judicial police officers must, whilst ensuring the secrecy of the investigation and its smooth progress, provide the person in custody with all means of allowing them to immediately communicate with a person of their choice among their parents, children, siblings or spouse and to receive a visit or contact their lawyer. [...] If the custody is extended, the person held in custody may receive a visit from their lawyer. However, should the open inquiry be investigating infractions of drug trafficking, organised transnational crime, attacks on systems automatically dealing with data, money laundering, terrorism and infractions of foreign exchange and corruption legislations, the person held in custody may receive a visit from their lawyer after half of the maximum time laid out in Article 51 of this said law. The visit takes place in a secure space guaranteeing the secrecy of the meeting monitored by the judicial police officer. The duration of the visit may not exceed thirty (30) minutes. This shall be mentioned in the report"*.

Despite this amendment, the Algerian legislation is still not consistent with the rights of the defence as guaranteed notably by the international and regional conventions of protecting human rights. In fact, the right to have access to a lawyer is not applied as soon as freedom is deprived but only if custody is extended. What's more, numerous exceptions are envisaged for extending the delay before the person in custody can meet with their lawyer.

## C. On the practice

Algeria is a party to all international conventions condemning torture. Nevertheless, the practice shows that even today, Algerians are victim to arbitrary and secret detention and

[39] Committee against Torture, *Concluding observations of the Committee against Torture, Algeria*, 16 May 2008, CAT/C/DZA/CO/3, § 5

[40] Ordinance no. 15-02 of 7 Chaoual 1436 corresponding to 23 July 2015 modifying and completing ordinance no. 66-155 of 8 June 1966 as stated in the Code of Criminal Procedure

torture[41] despite the prohibition in place by the Algerian legislation itself and in violation of Articles 5 and 6 of the ACHPR and Robben Island Guidelines.

This situation again shows the prohibition of torture by law is necessary but insufficient. The authorities should especially take concrete measures so that State officials are trained in the prohibition of torture and that those who are guilty of acts of torture, as well as members of their hierarchy including in politics, be prosecuted and given prison sentences.

- **The case of Mr Medjoub Chani**

On 16 September 2009, Mr Chani went to Algeria to celebrate Eid with his family. On his arrival at the Algiers airport, he was stopped by the border police (PAF). After verifying him, members of the PAF returned his passport and allowed him entry to Algerian territory.

On the morning of 17 September 2009, while preparing to leave the El Djazaïr hotel where he was staying, Mr Chani was violently arrested by a dozen agents in civil uniform driving unmarked cars. These latter neither gave their identity nor presented an arrest warrant. They handcuffed him and took him away in one of their vehicles. Mr Chani was then driven to an unknown location, which was later revealed to be the structure of the Department of Intelligence and Security (DRS) in Antar.

From 17 September 2009 until 6 October 2009, so 20 days, Mr Chani was arbitrarily held in a secret detention centre, cut off from the outside world. He was not allowed to contact his family or his lawyer. He was subjected to inhuman and degrading treatment and acts of torture and humiliation. He was forced to undress completely whilst being punched and kicked by members of the DRS multiple times and was subjected to attempted strangulation. Some agents even urinated on his naked body. He was subjected to uninterrupted periods of interrogations which lasted days and nights, without respite, without rest, without sleep or food, deprived of minimum hygiene.

Mr Chani was only presented before the Public Prosecutor at Bir Mourad Raïs and then before the Public Prosecutor at Sidi M'Hamed in Algiers on 6 October 2009. He was then questioned on 7 October 2009 by the investigating judge of the 9th Sidi M'Hamed tribunal chamber who interrogated him from midnight to 4 am on the basis of confessions extracted and obtained under torture. He was then placed in pre-trial detention.

After two years of arbitrary detention and despite risks of retorsion, Mr Chani finally complained to the General Prosecutor at the Algiers court in November 2011 for the enforced disappearance and arbitrary detention at the DRS location, torture and ill-treatment, and the abuse of authority. The complaint was closed without further action one month later without questioning the complainant and without opening an investigation. The procedure for joining

[41] See CFDA, *Human Rights Put Algerian Regime to the Test – The illusion of change,* 2013, p. 43-46

a civil action is excluded in cases where the judicial police officers are pursued as in the present case pursuant to Articles 206, 207 and 577 of the Code of Criminal Procedure.

It wasn't until 6 June 2012, after nearly three years in pre-trial detention, that Mr Chani was finally judged and sentenced to 18 years of imprisonment, reduced to 15 on appeal. He was also prosecuted for a second charge based on confessions signed under torture and on 7 May 2015, was sentenced to ten years in prison following a grotesque trial. His lawyers had requested the court listen to the DRS agents who had cosigned Mr Chani's verbal reports, the prosecutor and investigating judge who had listened to the victim after 20 days of arbitrary detention and the doctor who had examined him at the end of his time in custody. The judges refused to hear these testimonies. Mr Chani and two of his codefendents denounced before the court the tortures they were subjected to but the judges refused to take these into account.

Out of desperation, Mr Chani went on hunger strike for 45 days to protest the injustice he has been suffering for more than six years.

- **The case of Mr Kameleddine Fekhar**

Kameleddine Fekhar, a human rights defender, was arrested by the police at his home on 9 July 2015 for being a part of the conflicts which took place in Ghardaïa. According to the report by his lawyer and President of the Algerian League for the Defence of Human Rights (LADDH) Maître Salah Debouz, law enforcement came to arbitrarily arrest Fekhar at his home without an arrest warrant, bench warrant or search warrant at around 10 pm, outside of the times laid out in the Code for Criminal Procedure.

Held at the Ghardaïa police station from 9 until 15 July 2015, he was subjected to ill-treatment. Mr Fekhar was then forced onto his knees facing the wall and was struck and punched multiple times by a member of the forensics team. The doctor's report issued after the time in custody notes injuries. Rights to the defence were also not respected. As such, in violation of Article 51a bis of the Code of Criminal Procedure, the person in custody was unable to choose his doctor. This latter was assigned by the law enforcement and acted under their authoritarian watch. His lawyer has filed a complaint for the punches and injuries and for home invasion.

## D. Recommendations

Faced with this alarming statement, the authors of this report call on the African Commission on Human and Peoples' Rights to:

- Force the State to cooperate in an effective manner with the bodies promoting and protecting human rights and especially on issues relating to torture and arbitrary detention;

- State that the provisions of ordinance no. 06-01 and especially Articles 27 to 39 and Article 45 constitute a violation of Article 5 of the ACHPR with regards to missing persons and their families;

- Force the State to repeal Article 45 of ordinance no. 06-01 so that crimes with no statute of limitations, such as torture which includes enforced disappearance, may not be subject to an exemption of prosecutions;

- Force the State to repeal the provisions of ordinance no. 06-01 which obliges families of missing persons to attest to the death of their family member in order to be eligible for compensation;

- Force the State to take all necessary measures without delay to guarantee that all cases of torture, both past and present, including cases of enforced disappearances, are subject to systematic and impartial investigations and that the authors of these acts are prosecuted and punished proportionally to the severity of the crime;

- Force the State to compensate torture victims, including victims of enforced disappearance, fairly and adequately;

- Invite the State to take provisions so that all confessions for which it has been established that they were extracted under acts of torture or other punishment or cruel, inhuman or degrading treatment cannot be submitted as evidence in a trial, if it is against the person accused of torture to establish that such a confession was made;

- Force the State to guarantee within the Code of Criminal Procedure the person in custody's right to have access to a lawyer at the time of their arrest and guarantee that this right be applied unconditionally;

- Recommend the State Party to train law enforcement officers and especially Department of Intelligence and Security (DRS) agents to respect human rights and implement evaluation and monitoring mechanisms to measure the effects.

## 6. VIOLATIONS OF THE STONE CUTTERS' RIGHT TO GOOD HEALTH

The State Party is obliged to respect Article 16 of the African Charter on Human and Peoples' Rights which guarantees everyone the right to benefit from the best physical and mental health as possible. It has taken necessary measures to protect the health of its citizens and to ensure medical assistance in the event of any illness. Furthermore, Article 15 of the Charter protects the right to travel in fair and favourable conditions.

According to recommendation no. 14 of the 2008 African Commission, the State should: *"take the necessary measures to ensure respect for the rights and freedoms of all persons as enshrined in the African Charter"*.

During the current period, many people who work as stone cutters have fatally fallen victim to professional illness **silicosis.** The Algerian State has not taken any measures against this.

No evidence on victims of silicosis was given in the State's fifth and sixth periodic report[42].

### A. The practice

Sandstone is extracted in the Tizi Ouzou region in Kabylie. Working this stone is a specialty of workers in Tkoutt, a small town of 11,000 inhabitants in the Aurès Mountains, where 30% of the population is unemployed. Workers from Tkoutt therefore have to travel hundreds of kilometres from their homes to earn their living by working in these extraction sandstone quarries.

With neither mask nor protection, the stone cutters have been confronted, for many years now, with the emergence of an incurable professional illness: silicosis. In fact, sandstone releases fine particles of silica when cut which enter the lungs through the airways and enter organisms through skin pores.

Due to lack of means, the workers protect themselves from the dust by putting cotton in their noses and wearing flu masks, which are too thin and unsuitable.

The illness can develop within several months and hundreds of young craftsmen are forced to return to their native village, Tkoutt, to be treated or die, in the public authorities' complete indifference. **Since 2001, 130 people have succumbed to the illness, 360 are in advanced stages of the illness and 15 others are on continued life-support.**

[42] Algeria, *Fifth and Sixth Periodic Reports, 2010-2014,* December 2014, p. 40-51

Despite the danger, young generations continue to practice this profession, not having any other alternative to support their families. Once ill, the workers can only receive the 3,000 dinar monthly aid from the local government, the equivalent of two days' pay for cutting stone.

And, when the victim passes away, the family finds themselves deprived of resources and is not granted any compensation as the stone cutters are not affiliated with social security. **There are currently 45 widows and 82 orphans suffering the consequences.**

Maître Kouceila Zerguine, the victims' lawyer and member of both LADDH (Algerian League for the Defence of Human Rights) and RADDH (Network of Lawyers for the Defence of Human Rights), denounces the lack of control in the importation of cutting material, suspected of containing asbestos, and the complete lack of prevention by the labour inspection.

In fact, in 2007, the issue of the stone cutters in Tkoutt was brought up during a question and answer session in the Algerian parliament but, since then, nothing has been done by the authorities.

The State Party, however, is obliged to monitor and ensure the health of the workers. Law No. 88-07 relating to occupational hygiene, safety and medicine stipulates in its Article 31 that: *"enforcing the legislation in occupational hygiene, safety and medicine is attributed to the labour inspection, in compliance with its attributions"*. Article 2 of Law No. 90-03 relating to labour inspection notably stipulates that: *"the labour inspection is tasked with ensuring the enforcement of legislative and regulatory provisions relating to individual and collective work relations, working conditions and the hygiene and safety of the workers"*. Articles 9, 10 and 11 stipulate that, while the labour inspector notes a serious and imminent danger to the health and safety of the worker during his visit, he must contact the competent *wali* or President of the Communal Territories People's Assembly to take all useful measures.

Despite the existence of these legislative provisions, no measures have ever been taken to protect these stone cutters' right to good health. Victims of silicosis are left to their own devices, without any medical aid aside from one bottle of oxygen covered by their community.

In 2013, faced with the authorities' inertia for protecting the workers, Maître Kouceila Zerguine has taken further steps with the authorities, especially through letters to the President of the Council of the Nation, President of the National People's Assembly and President of the Republic, all of whom have not responded.

Not only do the authorities not reply, but they even refuse the LADDH authorisation to organise an exercise of awareness and prevention among stone cutters on 15 March 2014. This prohibition was very detrimental to the organisers and those who stood to benefit from it.

Maître Kouceila Zerguine was also able to raise around €700 to buy 1000 FFP3 masks (anti-silica) which have never been used.

Many urgent appeals have also been sent in 2013 to bodies promoting and protecting human rights in favour of the two stone cutters Mr Berrahail Salim and Mr Adel Beldjaraf, victims of silicosis who died in 2013 and 2015 respectively.

## B. Recommendations

Faced with this statement, the CFDA calls on the African Commission to force the Algerian State to:

- Investigate the illness silicosis;
- Guarantee the stone cutters' right to good health by taking all useful preventative and health protection measures;
- Guarantee complete and suitable medical cover for all victims of silicosis;
- Ensure the compensation of legal successors following the death or definitive incapacity of the stone cutter;
- Protect the health of all workers in compliance with the African Charter and national legislation.

# 7. VIOLATIONS OF WOMEN'S RIGHTS

Women's rights are guaranteed by Articles 2, 18 and 28 of the African Charter on Human and Peoples' Rights ratified by Algeria in 1987, and especially by Article 29 of the Constitution which guarantees the quality of citizens before the law without any discrimination prevailing due to gender.

In Algerian society, however, the woman is often considered the weaker sex and is subjected to physical and psychological violence simply because she is a woman, due to the weight of religion and traditions. It is difficult to obtain complete figures concerning violence linked to gender due to its taboo status in Algerian society. The latest figures announced publicly by the Directorate General of National Security (DGNS) on 25 November 2014 on the International Day for Eliminating Violence against Women are very concerning. Over the course of the first nine months of 2014, the security services registered 6,985 complaints from female victims of violence. Among them, 5,163 women suffered from physical abuse, 1,508 suffered ill-treatment, 205 were victims of sexual assault and 27 others were victims of premeditated homicide[43].

## A. Draft legislation on violence against women

Endorsed by the Algerian government in 2007, the strategy to combat violence against women implemented by the Delegate Minister responsible for the Family and the Condition of Women wanted a general framework for bringing awareness to as well as protect and assume responsibility of this issue. As a reminder, this strategy rests on three main points: firstly ensuring the appropriate management for the protection and security of the women, clinical management specialised in violence and guaranteeing legal aid. Secondly, organising solidarity through social and economical reinsertion of the beaten woman, and finally implementing measures, procedures and reforms at a juridical and constitutional level.

Faced with this phenomenon which persists and continues to grow, draft legislation penalising violence against women was proposed in 2014 by the government after extensive background work led by associations working for women's rights in Algeria.

The associations have welcomed the governmental initiative for amending the Penal Code with a view to protecting women because, for the first time, the Algerian legislator is introducing the notion of violence against women, especially domestic violence in its chapters (crimes and offences against private individuals), including section 2 (premeditated violence), section 5 (abandoning the family) and section 6 (assault on minors). Nevertheless, this draft

[43]http://www.aps.dz/societe/14301-violences-contre-les-femmes-6-985-cas-enregistr%C3%A9s-%C3%A0-travers-le-pays-en-2014-s%C3%BBret%C3%A9

legislation has not taken into account the following points: recognising the victim of violence status of women, consciously defining the different types of violence perpetrated against women and stipulating the revision of the Code of Criminal Procedure where the procedures for applying these texts are defined, relieving the victim of the responsibility of providing proof, requiring the author of the violence to be removed from the family unit and barring them from approaching the home until the trial is over, stipulating the payment of compensation to the victim and taking into account moral prejudice. This same draft legislation has reduced the prosecution's role to simply recorder of complaints although they are meant to protect the victims and initiate investigations of their own when their rights have been violated, to take public action even if civil action is dropped following the victim's forgiveness.

Regarding this last point, Article 266 introduces the notion of a pardon and stipulates that the victim can end all legal action when temporary incapacitation does not exceed 15 days. In the event of a victim suffering a disability, however, the law stipulates sanctions of 10 to 20 years in prison, whereas in the event of a pardon, the sentence is reduced to 5 to 10 years in prison. This "pardon clause" therefore automatically puts an end to public action and is an appeal to impunity for the authors of this violence. Associations for the defence of women's rights are extremely concerned about this clause which completely renders the entirety of the law meaningless and does not protect the women in the family environment.

This draft legislation is heavily criticised by Conservative members and religious figures who consider that this will endanger the Algerian family and encourage women to divorce. Since its adoption in March 2015 by the National People's Assembly, the project has been blocked and has still not been examined by the Council of the Nation (the Senate).

### B. The Family Code: the woman's status

- ***Marriage/divorce***

The Family Code of 9 June 1984, amended by ordinance no. 05-02 of 27 February 2005, violates the dignity of the Algerian woman and consecrates her inferiority to man with a life-long status of minor. The Family Code modified in 2005 governs marriage, divorce, the effects of divorce, custody and guardianship of children, filiation and inheritance, and draws its main source from Muslim law. Built on a hierarchy of sexes, it has outlined a traditional family model and consecrates discrimination made on gender.

To cite just a few examples of discrimination against women:

Pursuant to Article 7a: *"Future spouses must present a medical document dating from fewer than three (3) months ago stating that they do not have any illness and which does not pose any risk to the marriage"*. However, this provision is often interpreted by the notary or registrar as an obligation of the future female spouse to present a "certificate of virginity".

According to Article 11, a woman of age may only be married in the presence of her *"wali"* who is her father or a close parent.

According to Article 30, a Muslim woman may not marry a non-Muslim man but the reverse is perfectly legal.

Furthermore, pursuant to Article 48, the woman may only ask for a divorce for a limited number of reasons which are often difficult to prove before the court, such as insolvency, non-consummation of marriage or for sexual problems, a prison sentence, a prolonged absence or grave immorality.

Article 66 clarifies that a divorced woman who has custody of her children loses this custody if she remarries. A divorced man with custody of his children, however, retains this custody when he remarries.

Finally, regarding inheritance rights, children who are male have the right to a two-part inheritance, whereas children who are female may only receive one part of the inheritance.

- ***Alimony fund***

Alimony fund was created to financially support divorced women who are not able to complete their decree of divorce. According to figures published in 2013, out of a total of 22,189 court decisions relating to the grant of alimony, only 2,498 were applied by the Ministry of Justice.

The alimony fund was created by Law No. 15-01 of 4 January 2015 and its objective is to ensure the protection of under-age children and the divorced woman who has custody. This latter will then benefit from alimony in the event of default by the debtor. As such, Article 3 stipulates that: *"Financial royalties are paid to the beneficiary in the event of a total or partial non-execution of the ordinance or judgement ruling on the alimony, for reason of the debtor's refusal to pay, inability to pay or ignorance of their place of residence".*

Article 5 stipulates that: *"the competent judge decides on request by the ruling ordinance within a maximum of five (5) days from the referral".* The creditor and the debtor of the alimony are then notified of the ordinance within a maximum of 48 hours from the decision being made. If there are any difficulties preventing the gain of these financial royalties, the judge for family affairs has a maximum of 3 days to pass a ruling. Finally, Article 6 specifies that the competent services orders the payment of the financial royalties to the beneficiary within a time period not exceeding 25 days from the date the ordinance was announced.

Although the creation of this alimony fund is a step forward, it is insufficient due to the paltry amount of alimony which does not enable the mother to easily cover the needs of her children, especially if she does not work. In fact, the judge often grants the woman holding the rights of custody 3,000 dinars a month, which is woefully inadequate compared to living costs.

Moreover, it is very difficult for divorced mothers to access justice to request the judgement to be carried out as the procedures and processes are so complicated and costly, which renders justice inaccessible to them and discourages them from continuing with the trial until the very end.

Finally, 8 months after being implemented, the fund is still empty. The authorities should remedy this situation urgently.

### C. Female victims of sexual violence during the 1990s

As part of the conflict in the 1990s, thousands of women were raped by the terrorists. These women waited for a long time for their victim status to be recognised and receive compensation for having been subjected to such trauma. Some high-level Algerian officials justified the absence of measures for victims of rape by preserving these women's "honour" as they believe that recognising the rape would disgrace the victim and her family.

On 1 February 2014, Prime Minister Abdelmalek Sellal signed decree no. 14-26 which stipulates the payment of compensation to female victims of rape perpetrated by terrorists during the 1990s, thus granting them the same right as other victims of terrorism.

Decree no. 14-26 completes decree no. 99-47 *"relating to the compensation of physical persons who are victims of physical injury and material damage suffered as a result of acts of terrorists or accidents occurring as part of the fight against terrorism, as well as their legal successors"*, adopted on 13 February 1999. Decree no. 99-47 defines the compensation processes for victims of terrorism, namely physical persons deceased or injured following an act committed by a terrorist or group of terrorists (Article 2) or following an accident occurring in the fight against terrorism (Articles 3 and 4).

Article 2 of decree no. 14-26 states that female victims of rape perpetrated by a terrorist or a group of terrorists should also be considered victims of acts of terrorism. To be granted compensation from the State, the victim must present other pieces of evidence than the report by the security services (Article 67a). The compensation is then calculated based on the rate of continuing partial incapacity fixed at 100% (Article 67b).

However, the relevance of this decree must be modified to address the issue of medical, psychological and social support needed by victims of sexual violence, as well as their rehabilitation and their right to justice. Furthermore, despite the complaints filed by the victims of rape, the authorities have never brought the authors to justice.

Thus, whereas the Algerian government has recognised that rape was used in the conflicts during the 1990s, the authors (terrorists, Islamists, State officials) have never been prosecuted. On the contrary, the Charter for Peace and National Reconciliation and its implementing provisions, especially ordinance no. 06-01, have granted amnesty to the authors of these

crimes, depriving the victims' access to justice. In fact, public action towards persons having committed or were accomplices of crimes qualified as acts of terrorism or subversion (Articles 87a to 87k of the Penal Code) is extinguished in accordance with Article 4 of ordinance no. 06-01.

It is equally important to highlight that, although rape is punishable by Article 336 of the Penal Code, there is no definition of rape. Article 336 simply stipulates that: *"Whoever commits a rape is punishable by a prison sentence of five to ten years"*.

The Algerian authorities do not consider the numerous recommendations issued by the UN bodies, which seems to imply that the largely incomplete decree no. 14-26 is simply for show.

In her report from 11 May 2011 relating to her November 2010 mission in Algeria, the Special Rapporteur on violence against women, its causes and consequences, Ms Rashida Manjoo, noted that, even though the Algerian authorities believed they had provided justice to female victims of sexual violence who can request compensation, organisations for defence of women's rights were very concerned with the lack of concrete rehabilitation measures, difficulties faced in obtaining the compensation and the lack of information on the investigations and inquests made into the authors of the sexual violence. The Special Rapporteur also highlighted, as did her predecessor who had visited in 2007, that she was unable to obtain statistics or official relevant information on the persons whose amnesty granted by the Charter's implementing provisions would have been refused because they were accused of rape[44].

The Special Rapporteur on violence against women has recommended opening a debate with civil society organisations in order to create a commission responsible for investigating all forms of violence committed against women during the 1990s. Four years have passed since this report and the Algerian authorities have still not implemented this commission.

In conclusion, Algeria has not respected recommendation no. 19 of the African Commission and violates Articles 2, 3, 16, 18 and 28 of the African Charter.

The CFDA therefore calls on the African Commission to condemn the State Party for these violations of the African Charter on Human and Peoples' Rights and to force them to:

- Ratify the African Charter on Human and Peoples' Rights' optional protocol relating to women's rights;

- Adopt a specific legislation against domestic and sexual violence towards women, by stipulating civil and penal recourses, and which takes into account the recommendations made by associations for the defence of women's rights;

[44] Report by Special Rapporteur on violence against women, its causes and its consequences, Ms Rashida Manjoo, 19 May 2011, §25

- Gather and publicise reliable data on the number of cases of domestic and sexual violence suffered by women;

- Revise the Family Code, especially the regulations on marriage and divorce to make them comply with the African Charter on Human and Peoples' Rights and the International Convention on the Elimination of All Forms of Discrimination against Women; respect the recommendations of the Special Rapporteur on violence against women, its causes and consequences and the Committee for the Elimination of Discrimination against Women;

- Add funds to the alimony fund and facilitate the granting procedure;

- Define rape and illegalise marital rape;

- Create an independent commission responsible for investigating all forms of violence committed against women in the 1990s; lead investigations and prosecute authors of crimes; ensure victims have access to justice; grant compensation adequately in line with the prejudice suffered by the victims; ensure psychological, medical and social aid to victims of sexual violence.

## 8. VIOLATIONS OF THE RIGHT TO NON-DISCRIMINATION

The State Party is obliged to respect Article 2 of the African Charter on Human and Peoples' Rights which guarantees the right to non-discrimination and Article 3 which consecrates the right to equality.

According to recommendation no. 14 of the 2008 African Commission, the Algerian State should: *"take the necessary measures to ensure respect for the rights and freedoms of all persons as enshrined in the African Charter"*.

During the current period, many Berber families have been faced with discrimination by the Algerian administration when they wanted to register their children under an Amazigh (Berber) name.

No response was given on these cases of discrimination in the State's fifth and sixth periodic report[45].

### A. Analysis of the law

In its preamble, the Algerian Constitution expressly recognises the Berber identity as a fundamental component of Algerian identity alongside Arab and Islam identity. What's more, Article 29 of the Constitution stipulates that: *"citizens are equal before the law, without any discrimination on grounds of race or any other personal or social condition or circumstance"*.

Regarding the choice of first names, Article 64 of ordinance no. 70-20 of 19 February 1970 relating to the Civil Status Code indicates that: *"The first names are chosen by the father, mother or, in their absence, the declarant. The first names of newborns must sound Algerian"*, which is certainly the case with Berber names.

Nevertheless, decree no. 81-26 of 7 March 1981 in which the establishment of a national list of first names is stated limits this choice to a list adopted jointly by the Minister of the Interior and Minister of Justice. This official list of first names should technically be updated every three years. However, it has still yet to be updated.

Finally, according to the Algerian Penal Code, this act of discrimination is not an infringement of rights.

[45] Algeria, *Fifth and Sixth Periodic Reports, 2010-2014,* December 2014, p. 21-22

## B. Analysis of its practice

In practice, the refusal to register Berber names with the Civil State has been ongoing since Algeria gained its independence. Many families have been faced with the administration's abusive and arbitrary practices during the period of this report.

On 11 March 2013, Fouad Hassam went to the town hall in Oran to register his daughter in the civil registry under the name of "Massilia". The civil registrar arbitrarily refused to register Hassam's daughter with this name, claiming this was not an Algerian name. The child was only able to be registered under this name 7 months later following a court decision.

On 11 August 2013, Ali Ouchène was also arbitrarily refused by the civil registrar in the town hall in Arris (in the Batna province) from registering his son under the name "Gaya" because this first name "would not make any sense". The father was only successful after 15 months of legal proceedings.

Likewise, on 9 November 2014 in Tkoutt (in the Batna province), the civil registrar refused to register a newborn under the name of "Thifyour". He made a demand for authorisation from the public prosecutor outside of the proper legal framework. The APC (Communal People's Assembly, equivalent of the town hall) then retracted their refusal when the parents took legal action against them.

On 14 November 2014, another family who wanted to register their daughter under the name of "Taziri" in the Ouargla province were refused by the APC's civil registrar based in Ouargla. This registration could only be made after the parliament intervened.

The situation of "Massilia", "Gaya", "Thifyour" and "Taziri" reflect that of many newborns and their families who are subjected to discrimination year after year.

In 2012, the Convention on the Rights of the Child was concerned: *"that in some cities, Berber families are denied their right to register their children with an Amazigh surname"*[46]. What's more, the Committee on the Elimination of Racial Discrimination declared in its concluding observations of 1 March 2013 that it: *"is concerned by the fact that civil registrars in certain wilaya communes refuse to register Amazigh first names on the ground that they do not appear on "the list of Algerian first names"*[47]. The information provided to the Committee by the Algerian government *"concerning the revision of the list of first names to include 500 Amazigh first names"* has still not been implemented to this day.

[46] Convention on the Rights of the Child, *Concluding observations, Algeria,* 18 July 2012, CRC/C/DZA/CO/3-4, § 39
[47] Committee on the Elimination of Racial Discrimination, *Concluding observations on the fifteenth to nineteenth periodic reports of Algeria, adopted by the Committee at its eighty-second session,* 16 April 2013, CERD/C/DZA/CO/15-19, § 16a

## C. Recommendations

Faced with this statement, the authors of the report call on the African Commission to request that the State Party:

- Take the necessary measures to ensure that all Algerians legally and actually can freely choose their children's first names and register them with the civil registrar without any discrimination;

- Ensure the administration is trained in the right to not be discriminated;

- Punish members of the administration who are guilty of being discriminating.