

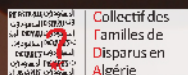


# Access to Justice

Universal Periodic Review of Algeria - 4th Cycle

41<sup>st</sup> UPR Session

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Joint Submission of the Cairo Institute for Human Rights Studies (CIHRS); the Collective of the Families of the Disappeared in Algeria (CFDA); the Danish Institute against Torture (DIGNITY); the Justitia Center for Legal Protection of Human Rights in Algeria; and Tharwa N'Fadhma N'Soumer.

## **I. Introduction**

1. This submission examines the availability of effective judicial remedies for human rights violations between 2017 and 2022 in Algeria, with a focus on the independence of the judiciary and the right to a fair trial; accountability for serious human rights violations committed during the Civil War; protection of survivors and accountability for gender-based violence (GBV); torture and ill-treatment in detention or during arrest.
2. As this report shows, since the last review of Algeria in 2017, the recommendations accepted by Algeria have not been implemented – particularly with regard to prohibiting and preventing torture, promoting the rights of detainees, facilitating access to justice for all, strengthening the rule of law, raising awareness and educating about human rights and gender equality, ratifying international instruments, lifting its reservation on Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), strengthening gender equality and combating GBV, and combating terrorism while protecting human rights<sup>1</sup>. No action has been taken to implement important recommendations to establish a support mechanism for survivors of GBV, establish specialized units for domestic violence across police station and provide sufficient funds to support survivors<sup>2</sup>.
3. We regret that Algeria characterized several recommendations as already implemented, in direct contradiction with documentation provided by civil society. Such recommendations include: apply the views of the Human Rights Committee and the recommendations of the Working Group on Enforced or Involuntary Disappearances (WGEID); comprehensively investigate human rights violations, notably during the 1990s and all cases of unlawful use of force

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<sup>1</sup> See respectively Recommendation 129.76; 129.85; 129.82; 129.83; 129.50 to 129.55; 129.63 and 129.72; 129.1; 129.15; and 129.166 to 129.168, 129.171 129.173, 129.178, 129.180 to 129.192, and 129.69-70.

<sup>2</sup> See Recommendations 129.178; 129.189 and 129.192.

by security forces; effectively implement the Convention against Torture; improve the independence of the judiciary, and promptly respond to visits requests by UN Special Procedures<sup>3</sup>. We urge the government of Algeria to reconsider in view of the documentation provided in this report.

4. We further regret that Algeria only noted recommendations to ratify the Optional Protocol to the Convention against Torture (OPCAT), the Rome Statute of the International Criminal Court, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED)<sup>4</sup>, as well as recommendations to amend the Family Code, to review the definition rape in the Penal Code, to repeal Penal Code provisions allowing perpetrators of GBV to be pardoned, to decriminalize consensual same-sex relations and protect the rights of gender minorities<sup>5</sup>. The government should revisit these recommendations in light of documentation provided below regarding the lack of accountability for torture, ill-treatment and other serious violations related to GBV.

## **II. Independence of the judiciary and right to fair trial**

5. Algeria adopted an amended Constitution in December 2020 through a referendum boycotted by the majority of the population<sup>6</sup>. The revision process

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3 See respectively Recommendation 129.26; 129.27; 129.80; 129.78; 129.79; 129.77; 129.81 and 129.29.

4 See respectively Recommendation 129.8 to 129.10; 129.18 to 129.20; 129.21 and 129.14.

5 See Recommendations 129.30 and 129.32, 129.70, 129.198; 129.197, 129.199-200 and 129.60 to 129.65.

6 While officially 66.8% of voters approved the revision, the process appears to have been largely discredited by a historically low official turnout rate of 23.7%, with some observers suggesting the real turnout rate was as low as 10%.

was flawed and took place in a context of crackdown on civil and political freedoms<sup>7</sup>.

6. While, in theory the amended Constitution guarantees fundamental rights and freedoms, in practice these protections are always conditioned on national legislation that actually restricts their exercise. Of particular concern is the new Article 34 that permits restrictions on rights and freedoms based on broad and subjective grounds<sup>8</sup>, without the safeguards mandated by international law<sup>9</sup>.
7. Despite certain provisions that ostensibly guarantee the independence of the judiciary, the 2020 Constitution ensures that the executive dominates the judiciary, which therefore cannot be qualified as independent. The President retains significant nomination powers within the judiciary overall<sup>10</sup>. The Constitution maintains excessive representation of the executive branch in the Supreme Judicial Council (SJC)<sup>11</sup>, headed by the President of the Republic and who appoints 19 Council members directly<sup>12</sup>. The new Constitutional court is also under strong influence from the President, who appoints at least one-third of its members directly, including its president<sup>13</sup>.

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7 A committee at the level of the Presidency was put in charge of receiving opinions and proposals to produce “a consensual constitution”. Read more: <https://cihrs.org/algeria-change-within-continuity-the-2020-constitutional-revision/?lang=en>

8 “Public order”, “security” and the protection of “national constants”.

9 These include necessity, proportionality, legality, legitimacy, equality and non-discrimination.

10 These include functions such as the President of the Court of Cassation and the Administrative Council, the General Prosecutor of the Court of Cassation, presidents of courts and general prosecutors at courts. The President of the Republic also appoints the First President of the Supreme Court, the President of the Council of State and the Magistrates.

11 A body in charge of safeguarding judicial independence and sanctioning judges.

12 Out of 26 members.

13 Six others are elected from among professors of constitutional law, under conditions and modalities determined by the President.

8. The constitutional revision introduced Article 30 (4)<sup>14</sup> and its unclear and imprecise formulation that gives the Army extensive power to override any executive, legislative or judicial body, thereby further undermining the independence of the judiciary.
9. Members of the judiciary have been subjected to arbitrary disciplinary proceedings and prosecutions.<sup>15</sup> On 30 May 2021, the SJC dismissed Judge Saad Eddine Merzouk, founder of the unregistered union "Free Magistrates Club", and issued a warning to Deputy Prosecutor Ahmed Belhadi in relation to their support of the Hirak protest movement and their defence of judicial independence. In October 2019, Nora Mokrane, president of the indictment chamber of the Court of Tipaza, was dismissed and transferred to another court after she ordered the release of political activist, Karim Tabbou.
10. Belkacem Maza, court clerk and member of the Algerian League for the Defence of Human Rights (LADDH), was suspended on 17 September 2020 and prosecuted based on his participation in Hirak protests<sup>16</sup>. Mourad Ghedia, court clerk and president of the National Federation of Justice Sector Workers<sup>17</sup>, was suspended in 2018 then arrested in April 2021 for his peaceful activism.
11. Several lawyers, notably members of the Collective for the Defence of Hirak Detainees<sup>18</sup>, have faced arbitrary prosecution and sanctions. Lawyer Abderraouf

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14 "The National People's Army defends the vital and strategic interests of the country in accordance with the constitutional provisions."

15 See <https://cihrs.org/targeting-of-algerian-lawyers-constitutes-new-escalation-in-the-unrelenting-criminalisation-of-fundamental-freedoms/?lang=en>

16 For offending public bodies and discrediting court decisions, respectively Articles 144 and 147 of the Penal Code.

17 Affiliated with the National Autonomous Union of Public Administration Staff, SNAPAP.

18 The Collective for the Defence of Hirak Detainees was formed in July 2019 after the first wave of arrests of peaceful protesters and voluntarily defends those arbitrarily prosecuted. See <https://lawyersforlawyers.org/en/lawyers-from-algeria-belarus-and-myanmar-shortlisted-for-the-2021-lawyers-for-lawyers-award/>.



Arslane<sup>19</sup> was arrested on 26 May 2021 and prosecuted for “participation in a terrorist organisation”<sup>20</sup> and “spreading fake news that may undermine security and public order”<sup>21</sup>, based on his work and the exercise of his freedom of expression. On 25 April and 25 May 2021, respectively, lawyers Mohamed el-Amin Ben Dahmane and Mohamed Makkawi<sup>22</sup> were suspended without justification. Several female members of the Collective reported being targeted by smear campaigns. Human rights lawyer Salah Dabouz was subjected to repeated judicial harassment and an attempted murder between 2017 and 2019<sup>23</sup>.

12. Presidential Ordinance 21-09 adopted on 8 June 2021 provides for three-to-five years' imprisonment for individuals who share information about ongoing judicial investigations or prosecutions, or allow their possession by an "unqualified person". This vague formulation and the disproportionate sentence have a chilling effect on human rights work, including regarding sharing of information with UN human rights mechanisms, and access to justice for victims of violations.
13. A large number of articles of the Penal Code remain drafted in vague and overbroad terms leaving impermissible room for subjective interpretation, contrary to the constitutional and conventional principle of legality. Such laws are used by the judiciary to criminalize fundamental freedoms<sup>24</sup>. Amendments to

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19 A representative of the Collective in Tébessa.

20 Articles 87bis 2 and 87bis 3 of the Penal Code

21 Article 196bis as amended in April 2020

22 Both are members of the Collective in Tlemcen.

23 More information here: <https://www.frontlinedefenders.org/en/profile/salah-dabouz>

24 These include Articles 75 (weakening the morale of the army); 79 (undermining national unity); 87bis to 87bis 14 (terrorist or subversive acts); 96 (distributing publications susceptible to undermine national unity); 95bis (see below); 100 (inciting an unarmed gathering); 144, 144 bis, bis1 and bis2 (offending public bodies, offense against the precepts of Islam); 146 (contempt, insult or defamation against public bodies); 147 (undermining the independence of the judiciary); 196 bis (see below).

the Penal Code adopted in April 2020<sup>25</sup> and in June 2021<sup>26</sup> facilitated the criminalisation of freedoms of association, peaceful assembly and expression notably under terrorism legislation.

14. The right to a fair trial is compromised in law and in practice. Individuals are often denied legal aid, presented to court or sentenced without a lawyer, sentenced in absentia without being informed, arrested without warrant and not informed of the reasons for arrest, tried under expedited summary trial procedure within days of their arrest, without benefiting from the necessary time and resources to prepare a defence.
15. Political opposition figure Karim Tabbou was sentenced to one year in prison in March 2020 in a trial held without notice to his lawyers. Activist Aissa Chouha was summoned on 8 September 2020 by the judicial police and the following day was sentenced to one year in prison in an expedited trial. Activist Amira Bouraoui learnt through the press that she had been sentenced to three years in prison on 8 November 2020, in absentia, for "offense to the precepts of Islam"<sup>27</sup>. On 21 January 2021, Hamid Soudad was sentenced to five years of prison for the same charge in an expedited trial, on the same day that he was summoned by

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25 On 28 April 2020, the Parliament hurriedly passed vaguely worded amendments to the Penal Code allowing for people exercising free speech to be charged with "spreading false news" susceptible to undermine security and "public order", punishable by 1 to 3 years in prison for a first offence (Article 196bis). Under a new Article 144, individuals can also now be sentenced from 6 months to 3 years of prison and a fine of 100,000 to 500,000 dinars for undermining the "honor, sensibility or respect" of a "magistrate, official, public officer, commander or agent of the public force", by "words, gestures, threats, sending or delivery of an object, either in writing or drawing not made public". Article 95bis now provides for a prison sentence of 5 to 7 years for the receipt of any form of funding, gift or advantage from a non-Algerian, state or non-governmental entity, regardless of their status, whether within or outside Algeria, "to perform or incite acts likely to undermine State security, the stability and normal functioning of institutions, national unity, territorial integrity, the fundamental interests of Algeria, security and public order".

26 The definition of terrorism in Article 87bis was expanded to include "working or inciting, by any means whatsoever, to gain power or to change the system of governance by non-constitutional means" and "undermining the integrity of the national territory or inciting to do so, by any means whatsoever".

27 Article 144bis 2 of the Penal Code.

the prosecution<sup>28</sup>. On 22 April 2021, academic Saïd Djabelkhir was sentenced to three years of prison for the same charge and claims he was neither heard nor summoned by the prosecution, and only learnt he was prosecuted online. Human rights defender Djamel Lalileche was presented before an investigative judge on 4 May 2021 without a lawyer.

16. The recourse to detention pending investigations and trial is in most cases excessive and unjustified in violation of the presumption of innocence in Article 9 of the ICCPR, especially for criminal and terrorism-related prosecutions. Article 45 of the Constitution guarantees that detention pending criminal investigation shall not exceed 48 hours and shall be subject to judicial oversight. However, the initial period of detention pending investigation can be extended up to 12 days for criminal cases, without judicial scrutiny<sup>29</sup>. The Human Rights Committee and the Committee against Torture expressed concern about this in their last Concluding Observations on Algeria<sup>30</sup>.
17. Pre-trial detention is described as an exceptional measure in Article 123 of the Code of Criminal Procedures but can reach 8 months for misdemeanours, 16 months for criminal charges and 48 months for “transnational crimes”<sup>31</sup> if justified. However, a significant number of people are held in lengthy pre-trial detention and refused conditional release when requested, without any

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28 The sentence was confirmed on appeal on 22 March 2021.

29 See Article 51 of the Code of Criminal Procedure.

30 See CCPR/C/DZA/CO/4 and CAT/C/DZA/CO/3.

31 See Articles 125; 125-1 and 125 bis of the Code of Criminal Procedure.



justification provided.<sup>32</sup> They are often eventually found not guilty, sentenced to a prison sentence shorter than the time they spent in prison, or not sentenced to prison at all.

18. These practices violate Articles 41 and 44 of the Constitution, which, respectively, guarantees the presumption of innocence until a fair trial takes place and provides that a person must be informed of the reasons for their arrest, that the law punishes arbitrary detention, and that pre-trial detention must be an exceptional measure. This is also in violation of Articles 9 and 14.3.c of the ICCPR<sup>33</sup>.

19. Death sentences continue to be applied for criminal and terrorism accusations, although none have been executed<sup>34</sup>.

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32 See generally: Authorities failed to provide activist Abdallah Benaoum with the necessary medical aid and repeatedly refused him provisional release ahead of his trial throughout 2020, despite his critical health condition. (More information: <https://cihrs.org/algeria-critically-ill-activist-abdallah-benaoum-must-be-immediately-released/?lang=e>.) Blogger Walid Kechida was initially sentenced to three years in prison on 4 January 2021 after more than eight months of pre-trial detention, reduced to 1 year of prison including 6 months suspended on appeal on 31 January 2021. At least 43 individuals prosecuted for unfounded terrorism charges are unjustifiably held in pre-trial detention for up to eleven months—including journalists Hassan Bouras and Mohamed Mouloudj, women and minority rights defender Kamira Nait Sid, and protesters Fatima Boudouda and Moufida Kharchi. (See Cairo Institute for Human Rights Studies, Algeria: Marked regression in human rights underscored by proliferation of baseless terrorism prosecutions, <https://cihrs.org/algeria-marked-regression-in-human-rights-underscored-by-proliferation-of-baseless-terrorism-prosecutions/?lang=en>.) Former Minister of Culture Khalida Messaoudi has been in pretrial detention since 4 November 2019 for misdemeanours related to corruption. (See ‘10 ans de prison ferme requis contre Khalida Toumi’, Echourouk online, <https://www.echouroukonline.com/10-ans-de-prison-ferme-requis-contre-khalida-toumi>.)

33 Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR) provides that: “It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial.” In interpreting this provision, the UN Human Rights Committee ruled in *Hugo van Alphen v. the Netherlands* (No. 305/1988) (July 23, 1990) that detention before trial should be used only to the extent it is lawful, reasonable, and necessary. Necessity is defined narrowly: “to prevent flight, interference with evidence or the recurrence of crime” or “where the person concerned constitutes a clear and serious threat to society which cannot be contained in any other manner.” Although there are no clear time limits set in international law for pre-trial detention, the Human Rights Committee has suggested that a 6 months limit was already incompatible with Article 9. (See Official Records of the General Assembly, Forty-fifth session, Supplement No.40, (A/45/40), vol. I, para. 47 (Democratic Yemen).)

34 See Cornell Center on the Death Penalty Worldwide, Algeria, <https://deathpenaltyworldwide.org/database/#/results/country?id=2>.

20. In the context of devastating forest fires that overtook northeastern Algeria in the summer of 2021, on 11 August 2021 Hirak activist and artist Djamel Bensmail was lynched to death by a crowd who believed him to be a pyromaniac, while in police custody. Statements published in the following days<sup>35</sup> raise questions about the exhaustiveness and impartiality of investigations into his death and the responsibility of the police forces.
21. Military courts continue to be used to try civilians for crimes involving state security, or military personnel for offences not strictly military in nature.<sup>36</sup> Military courts do not afford enough guarantees for the proper administration of justice in accordance with article 14 of the ICCPR. Lawyers are prevented from seeing defendants under Article 18 of the Code of Military Justice without authorisation from the court. Defendants are not eligible to become a civil party under military tribunals, giving them a status equivalent to that of a witness. In

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35 The young man was reportedly targeted by an angry mob while he was in a police van, in the courtyard of the Larbaâ Nath Irathen police station. The following day, the Larbaâ Nath Irathen prosecutor's office rushed to publish a press release confirmed facts that were not investigated and appeared to exonerate the security services from any responsibility. (See <https://www.aps.dz/regions/126070-citoyen-lynche-et-brule-vif-a-larbaa-nath-irathen-le-parquet-ordonne-l-ouverture-d-une-enquete>) On 15 August, the director general of the judicial police, Mohamed Chakour, praised the exemplary behavior of the police officers present that day. (<https://www.liberte-algerie.com/actualite/video-arrestation-de-36-presumes-coupables-dans-lassassinat-de-djamel-bensmail-363413>)

36 For example, on 14 May 2019, whistle-blower and former Sergeant of the National Gendarmerie Mohammed Abdellah was sentenced in absentia to 20 years in prison by the Blida military court for undermining state security and the reputation of the army. After being refused asylum in Spain, he was forcibly returned to Algeria on 21 August 2021, where he was held in incommunicado detention and claimed in court that he suffered torture and physical abuse. (According to a witness, he claimed in court on 2 January 2022 that he had been regularly beaten, all his clothing removed, and humiliated in the "Antar" center, a military facility in Ben-Aknoun, Algiers. He claimed he was held in isolation, in a cell without light, for at least 45 days. He said things were done to him that he could not speak of.) The judge replied that it did not concern him as he was detained in a military institution. Relatedly, on 10 February 2020, the Blida military court sentenced the president of the Workers' Party Louisa Hanoune to 9 months in prison, and 27 months suspended, for 'conspiring' to undermine the army, after she met with former intelligence officials and the brother of former president Abdelaziz Bouteflika. (On 2 January 2021, after an appeal in cassation, she was acquitted by the Blida military appeal court. (See "Algeria: 15 years in prison for Saïd Bouteflika and his co-defendants", Le Point, [https://www.lepoint.fr/afrique/algerie-15-ans-de-prison-pour-said-bouteflika-et-ses-co-accuses-11-02-2020-2362114\\_3826.php](https://www.lepoint.fr/afrique/algerie-15-ans-de-prison-pour-said-bouteflika-et-ses-co-accuses-11-02-2020-2362114_3826.php). ))

addition, a military court sitting as an indictment chamber supervises the actions of the examining magistrate, thus combining the function of investigation and judgement. Military judges and prosecutors are appointed by Presidential decree based on proposals submitted by the Defence Minister, raising questions as to their impartiality.

**Recommendations:**

22. Amend the Constitution to guarantee a clear separation of powers between the executive and the judiciary, including by ensuring judicial bodies such as the SJC and the Constitutional Court are fully independent.
23. Repeal Article 34 of the Constitution or significantly amend it to ensure that restrictions on rights and freedoms are in line with international human rights law.
24. Repeal Article 30(4) of the Constitution to ensure that the role of the military is specifically limited to matters of national defence, and make sure that the military is fully accountable and effectively subordinated to a legally constituted civilian authority.
25. Cease the sanctioning or prosecutions of lawyers and members of the judiciary in relation to their work, their union activity or other peaceful activism and ensure the Constitution prohibits any restrictions, intimidations or other interferences in judicial decision-making.
26. Extend an invitation to the Special Rapporteur on the independence of judges and lawyers.
27. Repeal or significantly amend Ordinance 21-09 in line with international standards on freedom of information<sup>37</sup>.

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<sup>37</sup> See Report of the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression, UN Doc. E/CN.4/2000/63, 18 January 2000, Annex II.

28. Repeal or significantly amend overly broad Articles of the Penal Code used to criminalise fundamental freedoms<sup>38</sup> and put an end to the detention and prosecution of peaceful activists, human rights defenders, journalists and others for exercising their fundamental rights.
29. Fully align its legislation and practices with articles 9 of the ICCPR<sup>39</sup>.
30. Put an end to expedited trial procedures.
31. Ensure that the jurisdiction of military courts is restricted to military personnel over strictly disciplinary matters not involving human rights violations, and is not used to prosecute free speech.
32. Ratify the Second Optional Protocol of the ICCPR with a view to abolish the death penalty.

## **II. Accountability and effective remedy for serious human rights violations committed during the Civil War**

33. Impunity for serious crimes committed during the 1990s continues to prevail. More than 8,000 victims of enforced disappearances remain unaccounted for, and their families lack any judicial avenues to access the truth on their fate.
34. The absence of prosecutions, the amnesty laws and the policy of "oblivion" implemented by the authorities have imposed a culture of impunity, which has

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38 See footnotes n°17 to 19

39 Notably by ensuring that anyone detained arbitrarily is released without conditions, and an independent investigation is launched into any allegation of arbitrary arrest; by amending Article 51 of the Code of Criminal Procedures to make sure that the period of initial police custody never exceeds 48 hours; by guaranteeing that all persons taken into custody enjoy unrestricted and unsupervised access to counsel; by ensuring that anyone arrested is brought before a judge promptly or subjected to non-custodial measures as an alternative to the excessive recourse to pre-trial detention; by ensuring individuals are promptly informed of the reasons for their arrest, informed of their prosecution, and allowed legal aid with the necessary time and resources to prepare their defence.

left no hope for families to ever uncover the truth and has not offered any guarantee of non-repetition.

35. The Algerian government passed several amnesty laws for crimes committed during the civil war that entrenched systemic impunity and prevented access to justice. Ordinance n°95-12 adopted in 1995, known as the Clemency Law, includes clemency measures up to a full amnesty for those convicted of "crimes of terrorism and armament" who have voluntarily surrendered and announced the cessation of their armed activities. Law n°99-08, known as the Civil Concord Law, adopted in 1999 specifically granted amnesty to those who were involved in terrorist groups. In 2000, Presidential Decree No. 2000-03 specifically exempted members of the Islamic Salvation Army and the Islamic League for Preaching and Combat from criminal prosecution.
36. In 2005, Algeria adopted the Charter on Peace and National Reconciliation with no preliminary debate. The Charter states that "the sovereign Algerian people rejects all allegations that attribute responsibility to the State for a deliberate phenomenon of disappearances ". Ordinance No. 2006-01 of February 2006 implementing the Charter adds to the impunity granted to Islamist armed groups by further granting immunity for State agents. Article 45<sup>40</sup> of the Charter prevents victims and their families from seeking any accountability for violations committed by State agents. Article 46<sup>41</sup> stifles any public discussion about the events of the 1990s by calling it an "instrumentalization of the national tragedy".

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40 No prosecution may be initiated, individually or collectively, against members of the defence and security forces of the Republic, all components included, for actions carried out to ensure the protection of persons and property, to safeguard the Nation and to preserve the institutions of the democratic and popular Algerian Republic.

41 Anyone who, by speech, writing or any other act, uses or exploits the wounds of the National Tragedy to harm 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 DA.

37. Article 46 was used to sentence activist Abdullah Benaoum to two years in prison on 6 June 2018 for online publications criticising authorities for their role in violations committed in the 1990s. Journalist Ihsane El Kadi was prosecuted following a complaint from the Ministry of Communication for an opinion piece published in March 2021, using Article 46 and other Penal Code provisions<sup>42</sup>.
38. Article 37 of Ordinance n°2006-01 as well as Presidential Decree n°06-93 of February 2006 relating to the compensation of the victims of the national tragedy only allow families to receive compensation after they have established a "judgement of death", thereby forcing them to choose between their right to reparation and their right to truth and justice<sup>43</sup>. In its Concluding Observations of 2008 on Algeria, the Committee against Torture considered that the subordination of compensation to the establishment of a judgment of death could constitute "inhuman and degrading treatment".
39. It is estimated that there are still at least 3,000 unidentified individual graves in the El Alia cemetery in Algiers and mass graves in Oued El Harrach, Tizi Ouzou, Laghouat and Batna. No action has been taken to exhume and identify the bodies despite the demands of the families.
40. Authorities have hampered the work of individuals and organisations seeking justice – especially mothers and families of the disappeared – by preventing their registration under law 12-06 on associations, threatening them, obstructing their peaceful gatherings and through arbitrary prosecutions.
41. Activist Slimane Hamitouche, member of the National Coordination for the Families of the Disappeared (NCFD), was arrested several times in relation to

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42 This charge based on Article 46 was subsequently dropped due to a "lack of jurisdiction".

43 This judgment is issued at the request of any member of the family accompanied by two individuals who have allegedly witnessed the arrest of the disappeared person, even though the circumstances of their disappearance, abduction or detention as well as his fate remain unknown.

his peaceful activism. He was arrested on 7 March 2020 and physically assaulted in a police station. On 15 September 2020, he was sentenced to one year in prison including eight months suspended. He was prosecuted in another case and eventually acquitted on appeal on 2 December 2021. In January 2018, human rights defender Amine Fadha was prosecuted for undermining the morale of the army, defamation and other charges for online publications in which he criticised the Government and the army for their involvement in the massacres of civilians in the 1990s. Members of the CFDA and SOS Disappeared were, on several occasions, followed in the street and threatened. The president of the CFDA, Nassera Dutour, is the target of several smear and defamation campaigns and has also received threats.

42. The Human Rights Committee has issued close to 40 opinions against the government of Algeria but none of its views have been implemented. The UN Working Group on Enforced or Involuntary Disappearances (WGEID) has shared 3253 cases of disappearances with the government as of September 2021, which remain pending. While Algeria accepted a visit by the WGEID in 2014, it has yet to be organised.

### **Recommendations:**

43. Repeal the Charter on Peace and National Reconciliation, its implementing ordinances as well as all blanket amnesty legislation and stop the criminalisation of free speech based on Article 46.
44. Ensure that thorough and independent investigations are launched into all allegations of enforced disappearance and ensure families have access to effective remedy, reparations and psychosocial support, including when a "judgement of death" was issued.



45. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED) signed in 2007, as well as the Rome Statute signed in 2000.
46. Cooperate with human rights mechanism by implementing the views of the Human Rights Committee, promptly resolving pending cases with the WGEID and organising the visit agreed on in 2014.
47. Arrange for the exhumation and identification of all unmarked graves and mass graves.
48. Put an end to the judicial harassment against individuals and organisations seeking justice from crimes perpetrated in the 1990s and allow them to work freely in line with international standards on freedom of association and peaceful assembly.

### **III. Protection of survivors and accountability for gender-based violence (GBV)**

49. The Algerian Constitution provides that all citizens have equal rights<sup>44</sup>. A new Article 40 introduced in December 2020 notes that “the State shall protect women from all forms of violence in all places and situations in the public, professional, and private spheres.”
50. In practice, women and gender minorities continue to face discrimination in private and public spaces and benefit from very little protection and accountability from gender-based violence (GBV). Algeria’s legal framework remains weak, lacking comprehensive legal measures needed to prevent GBV,

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<sup>44</sup> Articles 37 provides that all citizens are equal before the law and an equal right to legal protection, irrespective of gender. According to Article 35, the purpose of state institutions is to ensure the equality in rights and duties of all citizens by removing the obstacles, which (...) prevent the effective participation of all in political, economic, social and cultural life.

assist survivors, and prosecute offenders. There is still no comprehensive law to combat GBV.

51. The Penal Code and Family Code continue to codify gender-based discrimination by perpetrating a system of guardianship of men over women. Women face discrimination in marriage, divorce, child custody and inheritance in violation of Article 37 of the Constitution<sup>45</sup>.
52. Rape is a punishable offense under Article 336 of Penal Code but is not defined and does not include marital rape<sup>46</sup>. The Penal Code does not address other forms of sexual violence and only covers “indecent assaults”<sup>47</sup>, reflecting a focus on morality rather than bodily integrity. Article 326 of the Penal Code still allows someone who “abducts or corrupts” a female minor to escape prosecution through marriage, making her vulnerable to social pressure. This is used by rapists to escape prosecution and facilitates forced marriages. Article 279 provides that a person who kills or injures their spouse can be excused if their spouse was caught in an act of adultery.
53. Law 15-19 introduced amendments to the Penal Code criminalizing sexual harassment and domestic violence in December 2015. However, the law only applies to spouses and ex-spouses<sup>48</sup>. Under Article 264 of the Penal Code, victims require a medical certificate to initiate prosecutions, while under Article 266 physical violence is treated as a misdemeanour if it does not lead to more than 15 days of incapacitation. A perpetrator may still avoid prosecution if they

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45 For instance, women can only obtain divorce on restricted grounds while men can divorce their spouse unrestrictedly and an adult woman needs a male guardian to sign her marriage contract.

46 The crime of rape is not defined at all; the Penal Code only states in Article. 336: “Anyone who has committed the crime of rape is punished with imprisonment for a period of five to ten years. If the rape was committed on the person of a minor of sixteen years, the penalty is imprisonment for a period of ten to twenty years.”

47 In Articles 334 and 335.

48 Victims of physical, psychological or economic violence in a non-marital relationship or at the hands of family members are therefore left with no remedy.

are pardoned by the spouse under Articles 266 bis, 266 bis 1 and 330 bis. There are no provisions for protective or restraining orders.

54. Article 68 of the Algerian Constitution provides that the State shall promote parity between men and women in the job market. However, GBV continues to be widespread in workplaces. Labour legislation does not penalize sexual harassment.
55. The discriminatory treatment of women in law and practice, the lack of resources allocated to this issue, the lack of proper training and due diligence among relevant institutions, the economic dependence of survivors on their abuser and the stigmatization and hostility they face are factors that have contributed to women being unable or unwilling to report GBV<sup>49</sup>.
56. Article 40 of the Constitution states that the law guarantees victims' access to reception structures, care arrangements and legal assistance. However, services such as legal aid, medical and psychosocial support, and protection services remain limited<sup>50</sup>. There are only two state-run shelters<sup>51</sup> and five temporary accommodation centres<sup>52</sup>, of poor quality<sup>53</sup>.
57. There are no comprehensive official statistics available on GBV. The General Directory for National Security (DGSN) shares the number of complaints lodged by women for violence, which represents only a fraction of reality. In

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49 Women are frequently turned away from police stations when they do decide to file a complaint. Medical professionals are not adequately trained or lack resources to assist victims effectively and document and report violations.

50 There is no state budget dedicated to combatting gender-based violence and supporting victims. These services are therefore provided by civil society with limited capacity.

51 Bousmail and Mostaganem

52 Algiers, Constantine, Oran, Skikda, and Ouargla

53 They only accept women without their children, and are in majority run by volunteers who have not been adequately trained. These centres include "reconciliation services" further reinforcing the social pressure on women to pardon their abuser.

2019, there were reportedly 7,083 complaints filed, including 39 homicide cases<sup>54</sup>. In comparison, according to Feminicides-DZ<sup>55</sup>, at least 75 women died at the hands of their intimate partners, family members or strangers in 2019.<sup>56</sup> Women's rights group "Réseau Wassila" recorded an increase in calls to their helpline following confinement measures implemented in March 2020<sup>57</sup>.

58. The rape and femicide of a 19-year-old woman<sup>58</sup> in October 2020, by a man against which she had already lodged a complaint for rape<sup>59</sup>, sparked national outrage. A peaceful gathering organised in reaction was prevented by the police and several individuals including women human rights defenders (WHRDs) Jamila Loukil and Fatma Boufenik were arrested and prosecuted<sup>60</sup>.
59. Media and official discourse play an important role to perpetuate harmful stereotypes about GBV. In January 2021, the Algerian Audio-visual Regulatory Authority (ARAV) suspended a television program addressing incest and extramarital relations alleging that it was against Algerian values<sup>61</sup>. During the legislative elections campaign in 2021, a head of party compared female

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54 In 2020, the DGSN reported 6782 cases (<https://www.aps.dz/societe/116629-surete-nationale-augmentation-remarquable-de-la-criminalite-en-2020>) of violence against women, and 6930 in 2021 (<https://www.aps.dz/societe/135365-lutte-contre-la-criminalite-plus-de-205-000-affaires-impliquant-pres-de-272-000-individus-traitees>). See also <https://ciddef-dz.com/wp-content/uploads/2021/12/Ok-annuaire2019fr.pdf>.

55 An organisation using press reports and social media to document cases of feminicides.

56 Femicides Algeria, List of Femicides 2019, <https://feminicides-dz.com/feminicides/feminicides2019/listes-des-feminicides-2019/>

57 Friedrich Ebert Stiftung Blog, Violences contre les femmes en temps de confinement en Algérie, 22 May 2020, <https://mena.fes.de/blog/e/violences-contre-les-femmes-en-temps-de-confinement-en-algerie>

58 Chaïma Saadou, see <https://www.liberte-algerie.com/actualite/des-hirakistes-doran-condamnes-a-une-amende-avec-sursis-354899>.

59 Her complaint lodged when she was 15 was never investigated. See <https://www.facebook.com/collectif.face/photos/pcb.950284849132830/950284699132845>.

60 For unarmed gathering and disturbing public order.

61 <https://www.mosaiquefm.net/fr/actualites-internationales/852119/algerie-adultere-et-inceste-sujets-tabous-pour-les-teles>

candidates to "strawberries" without facing sanctions, while women had their pictures erased from electoral posters<sup>62</sup>.

60. Women have been at the forefront of the Hirak movement. However, WHRDs have faced pressures and smear campaigns not only from the authorities but also from activists who do not support or prioritize gender equality. They have also been arbitrarily detained and prosecuted<sup>63</sup>.
61. Consensual same sex relations continue to be criminalised in the Penal Code<sup>64</sup>. Vaguely formulated restrictions imposed by law 12-06 on freedom of association and the 1991 law on demonstrations<sup>65</sup>, make it almost impossible for LGBTQ+ groups to organize and advocate for their rights. LGBTQ+ individuals face house raids and arbitrary prosecutions for actions protected by the right to privacy, bodily autonomy and non-discrimination in the ICCPR<sup>66</sup>. The LGBTQ+ community is at heightened risk of torture and ill-treatment by the authorities as well as by other inmates.

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62 <https://information.tv5monde.com/terriennes/elections-en-algerie-qui-prend-les-candidates-pour-des-fraises-412131>

63 Notable cases: workers' rights activist Dalila Touat was arrested and prosecuted for her peaceful activism multiple times. She complained she was refused medical care in prison in January and February 2021, suffered intimidation and threats from prison authorities, and lost employment as a public secondary school teacher in retaliation. Minority and women's rights defender Kamira Nait Sid, co-president of the Amazigh World Congress (CMA), has been on pre-trial detention since 25 August 2021 and is prosecuted for fabricated terrorism charges. WHRD Amel Hadjadj was arbitrarily detained and physically and verbally abused by the Algerian police on 21 November 2019. Feminist activist and gynecologist Amira Bouraoui has been prosecuted in at least three different cases since June 2020. She received fines and suspended sentences for "offense to the precepts of Islam" and "offense to the President" based her online publications and activism.

64 With up to two years of prison under Article 338 and up to three years of prison for what is described as "an act against nature with an individual of the same sex" under Article 333.

65 For instance based on "good morals" and "national constants".

66 On 3 September 2020, in Constantine, two men were sentenced to three years of prison and 42 other men and women to suspended prison terms for what the police alleged was a "gay wedding". The sentences were reportedly upheld on appeal. More information: <https://www.hrw.org/news/2020/10/15/algeria-mass-convictions-homosexuality>

62. The legal vacuum pertaining to the protection of LGBTQ+ individuals in addition to the lack of awareness and training of relevant institutions prevents them from accessing any remedy in case of GBV or other discriminatory treatment. This leads LGBTQ+ individuals not to report violations in almost all cases based on their fear of being outed or prosecuted, creating a situation of complete impunity.

### **Recommendations:**

- 63. Repeal Articles 266 bis, 266 bis 1, 279 and 330 bis of the Penal code allowing perpetrators of GBV to escape justice.
- 64. Adopt measures to ensure effective access to justice, health care and social services for survivors of GBV<sup>67</sup>.
- 65. Repeal the Family Code.
- 66. Adopt comprehensive legislation to combat all forms of gender-based discrimination and violence in line with CEDAW provisions and in close cooperation with Algerian women's rights organisations<sup>68</sup>.
- 67. Amend Labour law 90-11 to prohibit sexual and other harassment in the workplace.
- 68. Lift all reservations to the Convention on the Elimination of Discrimination against Women (CEDAW), ratify its Optional Protocol and promptly submit an updated periodic report<sup>69</sup>.

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67 Including allocating sufficient budgetary resources to train and raise awareness among police, judicial and medical staff, developing comprehensive national database on GBV, improving access to protective shelters, establishing specialized domestic violence units or focal points in police force in all regions.

68 This legislation should at least include the establishment of protection orders for victims, the establishment of a comprehensive definition of rape and GBV in line with international standards and the prosecution of derogatory and discriminatory speech

69 The last one was submitted in 2009.

69. Request an invitation from the Council of Europe's Committee of Ministers to join its Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).
70. Repeal Articles 333 and 338 to decriminalize consensual same-sex relationships.
71. Put an end to the judicial harassment and intimidation of WHRDs and LGBTQ+ activists, fully allow them to advocate for their rights in law and in practice, and prosecute derogatory speech and smear campaigns against WHRDs and activists.
72. Review national education and awareness-raising policies to effectively combat derogatory gender stereotypes and modify discriminatory patterns of behaviour.
73. Extend open invitations to relevant Special Procedures<sup>70</sup> to visit the country.
74. Adopt a complete legal arsenal for the protection and support of women survivors of violence, including adequate reception centers for women and their children in distress as well as measures to remove the perpetrators of crimes, once the inmate is the aggressor released (first cause of feminicides is the revenge of the perpetrators of aggression).

#### **IV. Ill-treatment and torture in detention and during arrest**

75. Several shortcomings in Algerian legislation and the practice of State agents encourage incommunicado detention and create an environment conducive to the practice of torture and other ill-treatment.
76. The Code of Criminal Procedure (CPP) does not recognize the obligation of legal assistance for individuals in police custody from the start of detention, under penalty of nullity of proceedings. The CPP also does not establish the obligation to inform the family of the detainee's place of detention, as well as the

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<sup>70</sup> Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on violence against women, its causes and consequences; Working Group on discrimination against women and girls.



obligation of a medical examination from the start of the detention, under penalty of nullity of the proceedings.

77. Moreover, Algerian legislation and the judicial practice of State agents do not allow a person detained for more than 48 hours to challenge the legality of their detention before a judicial authority. In cases where they have been able to access legal assistance, they can only file a complaint with the public prosecutor, who is not considered a judicial authority under international human rights law.
78. Despite its ratification, the CPP does not include provisions providing for the inadmissibility of confessions extracted under torture provided under Article 15 of the Convention against Torture (CAT), which prevents victims from having any recourse<sup>71</sup>. It also does not mention the right not to testify against oneself protected under Art.14 (3.g.) of the ICCPR.
79. Most of the cases of torture, sexual abuse and ill-treatment documented between 2017 and 2021 are against "Hirak" demonstrators<sup>72</sup>, during arrest in a demonstration, during police custody or detention, or during a period of enforced disappearance. In all of these cases, the victims were arbitrarily detained or sentenced for their peaceful activism, most often in violation of their right to a fair trial. In at least two of the documented cases, the detainees felt they were targeted for their Amazigh identity.
80. All these cases involve the police services or the services of the General Directorate of Internal Security (DGSI), which are subordinate to the Ministry of the Interior and the Ministry of Defence respectively.

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<sup>71</sup> There is also no jurisprudence covering this principle.

<sup>72</sup> Mouvement de protestation populaire pro démocratie déclenché en février 2019 en opposition à un cinquième mandat de l'ancien président Abdelaziz Bouteflika, qui a ensuite revendiqué un changement de régime plus profond.

81. In all documented cases, no investigation was conducted. On several occasions, the medical certificates of the victims disappeared from their file or the victims did not have access to medical care<sup>73</sup>.

82. Among these cases:

- On 3 and 4 April 2021, 15-year-old Saïd Chetouane stated on video that he had been victim of sexual violence in custody<sup>74</sup>. A prosecutor announced that an investigation would be carried out by the judicial police, which is the body targeted by these allegations. A doctor reportedly refused to issue him a medical certificate without police authorization and the office of the public prosecutor at the Algiers court reportedly refused to register his complaint. On 27 April, the authorities announced they had arrested the young man on 26 April and placed him in a child protection centre<sup>75</sup> without informing his mother.
- A group of five activists<sup>76</sup>—two of whom filmed and then relayed Saïd Chetouane's allegations online—were arrested on 4 and 5 April 2021 without an arrest warrant and presented to court without lawyers. The authorities carried out a smear campaign against the young man and the five activists,

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73 The authorities never investigated the disappearance of these certificates even after a complaint was submitted; therefore, the alleged victims were never able to obtain reparations or receive appropriate support..

74 Following his arrest on April 3 for participating in a peaceful demonstration. See <https://www.youtube.com/watch?v=-RIAdKDZYr0>

75 Because of his participation in “unauthorised” marches. See <https://www.aps.dz/algerie/121050-l-enfant-mineur-chetouane-mohamed-place-dans-un-centre-specialise-dans-la-protection-des-enfants#:~:text=ALGER%2D%20La%20juge%20des%20mineurs,sa%20faveur%22%2C%20a%20indiqu%C3%A9%20un.>

76 Mohamed Tadjadit, Malik Riahi, Soheib Debaghi, Nouredine Khimoud and Tarik Debaghi

notably using homophobic accusations. On 29 March 2022, they were sentenced to 18 to 24 months of prison<sup>77</sup>.

- Activist Nabil Bousekkine<sup>78</sup> told a court on 28 March 2021 that he was the victim of violence in police custody<sup>79</sup> in Algiers<sup>80</sup>. He was not informed of his right to a lawyer while in police custody. The police allegedly made degrading remarks in reference to his Amazigh identity. He underwent three medical examinations but the police refused to give him the medical certificate, thus he could not file a complaint.
- Activist Ayoub Chahetou<sup>81</sup>, arrested on 26 March 2021<sup>82</sup>, said during his trial on 4 April that he was physically and sexually assaulted<sup>83</sup> by a police officer in a police station in El Bayadh on 28 March. The judge refused to hear his allegations. A prosecutor announced the opening of an investigation, which remained without effect. While in police custody, he neither received legal assistance nor was informed of this right. The judge refused to give his lawyer a copy of his statements so that she could file a complaint.

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77 They were prosecuted for various misdemeanours and crimes: attack on national unity, offence to constituted bodies and to the President of the Republic, dissemination of false information undermining public order, direction and organisation of an association of criminals, invasion of a child's privacy and exploitation for purposes contrary to morality, incitement to debauchery, and possession of narcotics.

78 On 2 June 2021, he was sentenced to 6 months in prison without a warrant for "incitement to unarmed gathering" (art. 100 of the Penal Code) and "disobedience" to the police (articles 183 and 184) .

79 This violence resulted in 21 days off work.

80 After his arrest following his participation in a demonstration.

81 On May 18, he was sentenced on appeal to 6 months in prison (including 2 months suspended) for intentional destruction of the property of others (article 470 of the Penal Code). Ayoub Chahetou allegedly "damaged the rear windshield of a police car", without any evidence being presented.

82 During a protest.

83 The police allegedly tried to strangle him by placing a board on his chest.

- Activist Sami Dernouni<sup>84</sup> was forcibly disappeared between 2-7 December 2020<sup>85</sup>. In a complaint filed on 7 April 2021<sup>86</sup>, he claims to have been violently arrested by plainclothes agents, who took him to the Antar military centre (Algiers), in contradiction with the official arrest report. There he was reportedly physically abused, ill-treated and denied medical treatment. He did not receive legal assistance, nor was he informed of this right. He was placed in pre-trial detention on 7 December without the presence of a lawyer.
- Student Walid Nekkiche testified during his trial on 1 February 2021 that he had been the victim of physical, sexual and psychological violence during his secret detention<sup>87</sup>. The ill-treatment allegedly took place in a police station in Algiers as well as in the Antar military centre managed by the DGSI, in inhuman detention conditions, between 26 November and 6 December 2019. The young man maintains that he was targeted with hateful and racist remarks based on his Amazigh identity. He was forced to sign a confession under torture, which the court refused to exclude as evidence against him<sup>88</sup>. The investigative judge refused a forensic medical report to confirm the abuse<sup>89</sup>. A complaint was filed for torture on 23 July 2020<sup>90</sup>, which remained pending.
- Human rights defender and journalist Saïd Boudour was physically assaulted by police officers on 23 April 2021, while covering a demonstration, and then

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84 On May 3, 2021, Dernouni was sentenced on appeal to 1 year in prison and 1 year suspended in relation to his peaceful activism.

85 He was allowed to call his family on December 3, without being able to give any information on his whereabouts.

86 With the public prosecutor of Tipaza.

87 After his arrest during a peaceful march in November 2019.

88 He was sentenced to 6 months in prison, already served after 14 months in pre-trial detention, on February 1, 2021.

89 On July 27, 2020, the investigative judge refused the request for a forensic examination to document the traces of torture filed on July 23.

90 At the General Prosecutor's Office of Algiers.

in a police truck after his arrest without a warrant<sup>91</sup>. Mr. Boudour was examined three times during his detention but the certificates systematically disappeared from his file. There is only a medical certificate concluding that there were no injuries. On 21 May 2021, Mr. Boudour's lawyer filed a complaint, which remained unanswered<sup>92</sup>.

- On 28 May 2019, Amazigh minority rights defender Kamel Eddine Fekhar died in detention, 50 days after initiating a hunger strike to protest against his arbitrary detention<sup>93</sup>. On 29 May, the Department of Justice announced the opening of an investigation, but the findings were never shared with the family or made public. On 17 June 2019, a judge at the Ghardaia court refused to investigate the case despite a complaint filed by the family.
- Mohamed Baba Nedjar, minority rights activist, has remained in detention since 2005. He was found guilty of premeditated murder in June 2006<sup>94</sup> following investigations and a judicial process that presented important

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91 The officers violently dragged, kicked, slapped, punched him on the body, head, face, and verbally abused him. During his detention from April 23 to 29, Mr. Boudour was unable to contact his family or a lawyer.

92 With the Public Prosecutor of Oran against the Governor of Oran and the Brigadier General of Police of Oran.

93 He was arrested on March 31, 2019 while participating in an interview in which he worried about the marginalisation of the Amazigh community by the Algerian authorities and accused of criticising public institutions.

94 Initially sentenced to death, he was tried again after a cassation appeal, in May 2009, before the Criminal Court of Medea, and was sentenced to life imprisonment as well as indemnities of 500,000 Algerian dinars.

irregularities<sup>95</sup>. Mohamed Baba Nedjar was reportedly victim of ill-treatment, including lack of access to medical care, and physical abuse in detention<sup>96</sup>.

## **Recommendations**

83. Conduct thorough and impartial investigations into all allegations of ill-treatment and violence during arrests, including in the event of the death of the person detained, and communicate the results at least to the families of the victims.
84. Revise the Code of Criminal Procedure (CPP) to clearly integrate the invalidity of confessions extracted under torture and make it fully compliant with Articles

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95 On 20 October 2005, Brahim Bazine, president of the local Red Crescent organisation and former FFS activist was sprayed with gasoline and immolated on his way to the local mosque. On his hospital bed, Bazine told police he was assaulted by “two masked individuals”, “dressed in black, who fled on two motorcycles”. Brahim eventually died due to his injuries on 22 October 2005. On 27 October 2005, Mohamed Baba Nedjar was summoned to the Taghardaït central police station. He was detained in isolation for six days at the prison of Taghardaït and was prevented from contacting his family or lawyer. When he eventually saw his father, he told him police officers had asked him to say that fellow Amazigh rights defender Kamel Eddine Fekhar was behind the assassination of Brahim Bazine, and threatened to sentence him to death if he refused to do so, which he did. Local police did not inspect the scene of the crime. Daoud Bazine, the victim's son, went to collect the gasoline bottle used to immolate his father on his own and turned it over to the police on 22 October. The police never appeared to be looking for a second assailant, per the victim's testimony. Police explained that eyewitnesses recognised Mohamed Baba Nedjar from a picture that his lawyer was never shown and that was never found in Baba Nedjar's prosecution file. Other witnesses, all minors, who testified to having seen Baba Nedjar near the mosque where Bazine was attacked a few days before the event, later declared not knowing Baba Nedjar or basing their testimony on second hand accounts. It was discovered that one of the witnesses gave a false testimony in another case in which another local activist was prosecuted. In addition, analyses carried out comparing the gasoline used to attack Brahim Bazine and the gasoline used by the Baba Nedjar family showed it was not the same product. Furthermore, the police presented as material evidence of the crime elements that only attest to Mohamed Baba Nedjar's opinions and activism: a vest on which was inscribed a slogan demanding the release of activist Khodir Babaz and a publication from the local FFS section. Investigators and the court refused to take statements from Mohamed himself, his father, uncle and other members of his family, who all confirmed that Mohammad was with them at the time of the crime on the other side of town, breaking fast at his uncle's house for Ramadan.

96 In 2017, the attorney general of the city of Saïda asked Baba Nedjar and his family to pay indemnities, which he refused. According to the attorney general, he could only request a pardon if the indemnities were paid.

2 and 15 of the Convention against Torture and Article 9-4 of the International Covenant on Civil and Political Rights (ICCPR) <sup>97</sup>.

85. Establish clear sanctions for public officials for non-compliance with these obligations.
86. Submit its fourth periodic report as soon as possible to the Committee against Torture; the last report submitted dating back to 2006.
87. Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
88. Declare acceptance of the competence of the African Court on Human and Peoples' Rights to receive case from organisations and individuals under Article 5(3) of the protocol to the African Charter on Human and Peoples' Rights.
89. Invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit Algeria.

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<sup>97</sup> Notably by clearly integrating the obligations of: legal assistance for detainees, and this from the start of the arrest; of family visits; informing the relatives of the detainee of the place of detention and systematically authorize their visit during the period of police custody; a medical examination upon arrest, or after each interrogation session, and before the detainee is brought before an investigating judge or released; the invalidity of confessions extracted under torture as evidence and the prohibition against forcing the accused to testify against himself; the possibility of filing a complaint with a judicial body recognized in international law to challenge the detention and the nullity of the proceedings instituted; formally recording the results of all medical examinations as well as relevant statements of detainees by a doctor and make them available to the detainee and his lawyer; full reparation to the victims, as well as appropriate psychosocial support.